United States Court of Appeals

for the Second Circuit

APPENDIX

76-6096

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6096

B

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

BOARD OF EDUCATION OF THE CITY OF NEW YORK, ET AL.,

Defendants-Appellees,

—and—

COUNCIL OF SUPERVISORS AND ADMINISTRATORS, LOCAL 1, AFSA, AFL-CIO, ET AL.,

Intervenors-Appellants,

—and—

COMMUNITY SCHOOL BOARD, DISTRICT 26,

Intervenors-Appellants.

AND

UNITED STATES OF AMERICA,

Petitioner-Appellee,

—against—

SOLOMON DEREWETZKY, ET AL.,

Respondents-Appellants.

UNITED STATES COURT OF APPEALS
FILED
JUL 30 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

APPENDIX

TABLE OF CONTENTS

Document	Page
Docket Entries	A-1
Complaint dated May 10, 1976	A-5
Affidavit of Martin Gerry dated May 10, 1976 (including sample Special Compliance Reports with Instructions)	A-12
EEO-5 Form	A-69
Transcript of May 21, 1976	A-71
Special Master's Report dated May 27, 1976	A-200
Letter of David G. Trager, Esq., dated May 28, 1976	A-212
Order (Weinstein, J.) filed on May 27, 1976	A-214
Order to Show Cause and Affidavit dated June 15, 1976	A-218
Transcript of June 16, 1976	A-229
Transcript of June 22, 1976	A-242
Transcript of June 23, 1976	A-323
Excerpts from Transcript of June 28, 1976	A-371
Excerpt from Government's Memorandum of Law filed on July 2, 1976	A-374
Report of the Magistrate filed on July 7, 1976	A-376
Excerpt from Government's Memorandum of Law filed on July 13, 1976	A-388
Order (Weinstein, J.) filed on July 15, 1976	A-390

76C 861

207/1	76	0861	05 10 76	1	4	APPEAL		0715	WEINSTEIN, J.

PLAINTIFFS | DEFENDANTS

Consolidated with 76C 1081

U.S.A.

UNITED STATES OF AMERICA

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK et al

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, A-Body Corporate; ISAIAH E. ROBINSON, JR. (PRESIDENT), STEPHEN A. AIELLO, AMELIA ASHE, JOSEPH H. BARKAN, ROBERT J. CHRISTEN JOSEPH MONSERRAT, and JAMES F. REGA As Members of the Board of Educatio of the City of New York; and IRVING ANKER as Chancellor of the Board of Education of the City of New York

CAUSE

28 USC 1345 - 42 USC S2000d et seq.; 20 USC S1601 et seq.; 29 USC S794
action to enforce Title VI of the Civil Rights Act of 1964
Related case: 76C 148

ATTORNEYS

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CHECK HERE IF GOVERNMENT CASE	FILING FEES PAID DATE	RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS CARD	DATE MAILED
				JS-5	
				JS-6	

76C 861 USA vs THE BOARD OF EDUCATION OF THE CITY OF NY

DATE	NR.	PROCEEDINGS
10-76		Complaint filed. Summons issued.
10-76		Memorandum of law filed. (1) (cg)
11-76		Clerk's Order for personal service filed. (2) (cg)
-12-76		/By WEINSTEIN, J.--order to show cause dtd 5-10-76 ret. 5-13-76 for an order grandint preliminary injunction, etc without proof of service filed. (3) (cg) (4)
5-12-76		Affidavit of M. Mulqueen for service of Order to Show Cause with summons and complaint filed. (5)
-13-76		Before WEINSTEIN,J.- Case called for OSC for perliminary injunction Motion argued and adjd 5-18-76
18-76		Before WEINSTEIN,J.-Case called & respectfully referred to Magistrate Chrein 5-21-76 to hear & report. All papers to be before Magistrate Chrein by 5-21-76 at 9 am.
/19/76		By WEINSTEIN,J.- Order dated 5/18/76 filed referring this case to Mag. Chrein. Copy of Order sent to Magis. Chrein (6)
-20-76		Defts memo of law in response to OSC filed. (7)
-21-76		Before CHREIN,MAG Conf. convened. Hearing Adj'd to 5-24-76/
-20-76		~~Before CATOGGIO, MAG-Conf. convened. Both sides to submit memorandums re Interrogatories to Sardell. No date set for same.~~
/24/76		Before CHREIN,MAG U.S.- Conference convened-Counsel present-Discussions had-Hearing suspended-Conference adjd to 5/26/76 at 3:00 P.M.
-26-76		Sten. transcript dtd. 5-21-76 filed. (8)
-26-76		Before CHREIN,Mag.- Case called for conf. conf held All parties present Mag. Chrein reviewed prepared order and Master's report Final order and findings of fact to be submitted to Mag., by 5-27-76
-27-76		Report of the Special Master Mr. Charles filed.
-27-76		By WEINSTEIN,J-Order dtd 5-27-76 that the Bd. of Education for the City of New York and the defts Chancellor, etc are permanently enjoined from refusing, or failing to distribute for the completion and answer the EEO-5 forms and the Special Compliance Report for Elementary Schools etc filed. This order constitutes the final judgment and order of this Court. mg (9) (10)
6/9/76		Letter from Richard Fisher dated 6/7/76 and repl, of Judge Weinstein filed (11)
5-15-76		By WEINSTEIN,J-ORDER TO SHOW CAUSE ret 6-16-76 for an order granting the motion of the CSA to intervene in the proceeding between the USA and the Bd. of Education etc filed. (12)
/1-76		By WEINSTEIN, J-JUDGMENT and order dtd 6-15-87 that the defts shall comply with the above mentioned order and cease and desist from counseling and encouraging others to disobey the order of this Court etc filed. This action is consolidated with 76C 1081 This order constitutes the final judgment. See 76C 1081.
6-16-76		Memorandum of law in support of applicant's motion for intervention as of right filed. (13) eg
6-17-76		By WEINSTEIN,J.- Order dtd. 6-16-76 referring motion to modify the final order of the Court to Mag., Chrein filed. (14)
21-76		Petition to hold defts in contempt filed. (15)
21-76		Affidavid of Jack Ford filed. (16)
21-76		Govt'f memo of law in support of motion to hold defts in contempt filed (
22-76		By WEINSTIEN, J--Order to show cause dtd 6-18-76 ret. 6-22-76 filed without proof of service for an order to hold defts in contempt. (18)

IVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.
USA	BD. OF ED.	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
6-22-76		Before WEINSTEINJ-Case called. Hearing ordered & begun. Case dismissed as to Derenitzky, Lawrence, Finkelstein, Miller, Gross, Mussinger, Kaplan, Levine etal. Warrants of arrest ordered for Shapiro, Massaria Brainin, Bromberg, Friscia, Pretty, Klevarick, Learner, Falk, Kohn, Pelcyger as indicated by the Court. Order to be submitted this afftternoon for information to be placed in computers. Hearing cont'd to 6-23-76.
6-24-76		Notice of appeal filed. (19)
6-21-76		Before CHREIN,Conf held. cont'd to 6-21-76. Before Weinstein on 6-22-76.
6-24-76		Copy of order to show cause and application for temporary stay ret at Court of Appeals filed. (20)
6-24-76		Copy of order by J. Weinstein pursuant to 28 USC 1292(b) filed. (21)
6-24-76		By WEINSTEIN,J-PRELIMINARY INJUNCTION dtd 6-24-76 filed. Ordered that the Office for Civil Rights of the Dept. of HEW is preliminarily enjoined from placing into its computer andy data or information being obtained from respondents who stated to the Court their objections to completing the EEO 5 forms etc filed. mg (22)
6-25-76		Affidavit of service for notice of appeal filed. (23)
6-25-76		Petition with memo of law and affidavit to hold respondents in contempt filed. (24/25/26
6-25-76		By WEINSTEIN,J.- Order to show caise ret. 6-28-76 re: why respoden should not be held in contempt etc., filed. (27)
6-28-76		Memorandum dtd 6-25-76 to J. Weinstein from Mag. Chrein filed. (28)
6-28-76		Before WEINSTEIN,J-Case called. Hearing ordered and begun and concluded. All respondents called. Motion re contempt is vacated as to all respondents that will comply with the Court's order. Warrants ordered for Bernard Daly, James Mullcney, Catherine Treglia, Margaret Nichols, Irwin Grossbard, Bernard Fishenfeld & George Miller.
6-28-76		Memo dtd. 6-25-76 from Mag., Chrein to Judge Weinstein filed. (29)
6-29-76		Affidavit of personnal service for memo of law filed. (30)
6-30-76		Civil Appeal Scheduling order filed. (31)
6-30-76		Intervenor's Memorandum of Law filed. (32)
6-30-76		Memorandum of law in support of applicant's motion for intervention as of right filed. (33)
6-30-76		Copy of memorandum from J. Weinstein to US ATTY TRAGER re letter from Jack Levine, Acting Principal of J.H.S. 22.filed. Attac letter from Jack Levine dtd 6-24-76. (34)
7-2-76		Notice of appearance and demand filed. (Deft) (35)
7-2-76		Govt's memorandum of law filed. (36)
7-7-76		Report of the Magis filed. (37)
7-7-76		By WEINSTEIN,J.- Order dtd. 7-3-76 that the parteis shall make immeadiate motions to confirm or object report All motions shall be made ret, in Westbury Parties informed filed on doc.#37.
7-8-76		Letter dtd 6-25-76 to J. Weinstein from Ms. M. Frank with copy of J. Weinstein's reply attached. 38

DC-111A (Rev. 1/7

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO.
76C 861 USA	BD. OF EDUCATION	PAGE 1 OF

DATE	NR.	PROCEEDINGS	
7-12-76		Letter dtd 7-8-76 to J. Weinstein from R.P. Caro filed.	(39)
7-12-6		By WEINSTEIN,J-Order dtd 7-9-76 directing the the briefs be furnished to the Court within one week filed on doc.#39.	
7-13-76		Memorandum of law filed.	(40)
7-14-76		Sten. transcript dtd 6-16-76 filed.	(41)
7-15-76 c		Letter of Richard P. Caro, Asst. U.S. Atty to Judge Weinstein dtd 7-9-76 filed re: hearing of exceptions to Magistrate's report.	
7-15-76		By WEINSTEIN, J.--Order dtd 7- 14 -76 that hearing on partial exceptions to the magistrate's report be held 7-14-76 at Westbury filed on doc. #42.	
7-15-76		By WEINSTEIN, J.--Order dtd 7-12-76 filed that the motion of COMMUNITY SCHOOL BOARD, DIST. 26 to intervene in the within proceeding is granted, etc.	
7-15-76		By WEINSTEIN,J-Order dtd 7-15-76 that the Community School Bd., District 26 is permitted to intervene etc. filed. See order.	(44)
7-19-76		Sten. transcript dtd. 7-14-76 filed.	(45)
7-19-76		Notice of appeal by Council of Supervisors etc., filed.	(46)
7-20-76		Letter dtd 7-9-76 to J. Weinstein from Cosmo J. Di Tucci.	(47)
7-21-76		Civil appeal scheduling order filed.	(48)
7-22-76		Affidavits of service filed.	(49)
7-23-76		Notice of appeal by Comm Scholl Board # 26 filed.	(50)

CIS:RPC:ald
F.#760,665

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, A Body Corporate; ISAISH E. ROBINSON, JR. (PRESIDENT), STEPHEN R. AIELLO, AMELIA ASHE, JOSEPH G. BARKAN, ROBERT J. CHRISTEN, JOSEPH MONSERRAT, and JAMES F. REGAN, As Members of the Board of Education of the City of New York; and IRVING ANKER as Chancellor of the Board of Education of the City of New York,

Defendants.

- X

COMPLAINT

Civil Action No. _____

C 861

The United States of America by its attorney DAVID G. TRAGER, United States Attorney for the Eastern District of New York, Richard P. Caro, Assistant United States Attorney, of counsel, for its complaint alleges:

NATURE OF THE ACTION

1. This is an action to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et seq, Title IX of the Education Act Amendments of 1972, 20 U.S.C. §§1681, et seq, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and to assert the Government's rights under an "Assurance of Compliance" that was duly executed by the legally responsible official for the Board of Education of the City of New York as a condition of continued receipt of federal financial assistance. Specifically, the United States of America seeks to enforce its right to ascertain if there have been violations of statutory prohibitions against discrimination on the basis of race, color, national origin, sex or handicap.

JURISDICTION

2. This Court has jurisdiction of this action under 28 U.S.C. §1345.

THE PARTIES

3. Plaintiff, United States of America, brings this action in its sovereign capacity to enforce its rights under the applicable statutes and regulations and under defendants' Assurance of Compliance.

4. Defendant Board of Education of the City of New York is a body corporate and has legal responsibility for the supervision of the administration of all schools operated by the defendant Board and by local community school boards. The Education Law of the State of New York, Art. 52, §§2551-2552, 2554 and Art. 52A §2590 et seq. (McKinney, 1970). This responsibility includes the duty to assure that equal educational opportunities in accordance with the law are provided for all children attending public schools of the City of New York under the control and supervision of the defendant Board of Education and the local community school boards. The Board of Education of the City of New York has its principal place of business at 110 Livingston Street, Brooklyn, New York, within the Eastern District of New York.

5. Defendants Isaiah E. Robinson, Jr. (President), Stephen A. Aiello, Amelia Ashe, Joseph G. Barkan, Robert J. Christen, Joseph Monserrat, and James F. Regan, are the members of the Board of Education of the City of New York and defendant Irving Anker is the

Chancellor of the Board of Education of the City of New York, and in such respective capacities are charged with the responsibility of administration of schools under the defendant Board's direct control and of supervision of the administration of all other schools under the control of the local community school boards. Included among these responsibilities is the duty to assure that all the public schools of the City of New York are providing in accordance with the law equal educational opportunities for all children attending the schools.

FOR A FIRST CAUSE OF ACTION

6. The United States of America repeats and realleges each and every allegation contained in Paragraphs 1 to 5 hereof as though fully set forth herein.

7. Federal law prohibits discrimination by any receipients of Federal financial assistance on the basis of race, color, national origin, sex, or handicap in any program and activity.

8. The Office for Civil Rights("OCR") of the Department of Health, Education and Welfare is charged with the responsibility of inter alia, assuring that the recipients of federal financial assistance do not discriminate in any educational program or activity. As part of its duty OCR is required to investigate all complaints or other evidence of illegal discriminations and periodically to conduct compliance examinations. 45 C.F.R. §80.7. Each recipient, on its part, is required to provide OCR with such information as the responsible OCR official may determine to be necessary to ascertain whether alleged violations have occurred or whether the recipient

of Federal financial assistance has otherwise complied with the statutory prohibitions against discrimination. 45 C.F.R. §80.6.

9. The defendant Board of Education of the City of New York and the local community school boards have received and continue to receive Federal financial assistance provided by the United States of America through HEW for use in all the public schools in the City of New York.

10. As a result of prior surveys indicating the existence of possible violations of the statutory prohibitions and numerous complaints alleging various and widespread instances of illegal discrimination in the public schools and the public school system of the City of New York, OCR has sent to defendants certain documents in which information necessary and relevant to the investigation of these complaints is being sought. These documents are more fully described in the affidavit of Martin H. Gerry, submitted herewith, and consist of special compliance reports and EEO-5 forms. Defendants were instructed to distribute these documents for the timely completion by the appropriate school officials. Defendants have failed to distribute these special compliance reports and had delayed the distribution of the EEO-5 forms until May 7, 1976.

11. The failure of defendants to distribute the special complaince reports and defendants' failure to timely distribute the EEO-5 forms is preventing the Government from acquiring information necessary and relevant

to the alleged violations under investigation and information pertinent to ascertaining whether statutory provisions prohibiting discrimination in educational programs and activities conducted by recipients of Federal financial assistance and from being able to timely obtain the required information prior to the close of the current school year. Defendants' actions are in violation of 45 C.F.R. §80.6 and impede and impair the expeditious enforcement of the statutory prohibitions.

FOR A SECOND CAUSE OF ACTION

12. The United States of America repeats and realleges each and every allegation contained in Paragraphs 1 to 11 hereof as though fully set forth herein.

13. On February 1, 1965, the then President of the City of New York Board of Education, as the Applicant for Federal financial assistance for the New York City Public School System, and on behalf of the Board of Education of the City of New York and all its successors, transferees, and assignees, which includes all present local community school boards, did duly enter into an agreement entitled Assurance of Compliance With the Department of Health, Education and Welfare Regulation Under Title VI of the Civil Rights Act of 1964 ("Assurance of Compliance") whereby in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended thereafter did agree that it would comply with applicable statutory prohibitions and with all requirements imposed by or pursuant to federal

regulations implementing the statutory provisions prohibiting discrimination by recipients of Federal financial assistance in any program or activity and did further agree and assure that it would immediately take any and all measures necessary to effectuate the agreement.

14. The United States of America through HEW and in reliance upon said Assurance of Compliance has provided and is still providing to defendants substantial Federal financial assistance for use in the public schools of the City of New york.

15. In violation of said Assurance of Compliance, the defendants have wrongfully failed and refused to perform the conditions of said agreement as heretofore described in Paragraph 10 of this Complaint.

16. The benefits of compliance with Title VI of the Civil Rights Act of 1964, Title IX of Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973, sought to be achieved by the United States of America, is unique and special and not susceptible to adequate compensation at law.

WHEREFORE, the United States of America prays for the First and Second Causes of Action.

(a) that this Court enter an order preliminarily and permanently enjoining defendants, their successors in office, agents, employees, and all persons in active concert or participation with them from refusing and failing to distribute the special compliance reports forthwith to the appropriate school officials, from refusing and failing to require these school officials to complete and return these reports and the EEO-5 forms on or before May 28, 1976, and from refusing and failing to require such school officials,

from whom officials of OCR prior to June 30, 1976, determine further information is needed, from making themselves available to officials of OCR for the purpose of submitting such further information on or after June 30, 1976.

(b) That the Court grant such further legal and equitable relief as it may deem proper and just.

Dated: Brooklyn, New York
May 10, 1976

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United States Attorney
Eastern District of New York
Attorney for Plaintiff
225 Cadman Plaza East
Brooklyn, New York 11201

By_____

Richard P. Caro
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - -

1972, and Section 504 of the Rehabilitation Act of 1973. These statutes, as applied to a public school system, prohibit a recipient of Federal financial assistance from discriminating in any program or activity on the basis of race, color, national origin, sex or handicap.

2. As a result of the information obtained thus far from the compliance examination and as a result of various complaints of specific and widespread violations of the statutes outlined in paragraph 1, a Special Compliance Report was developed to obtain specific information concerning these possible violations of the law. In this regard, it should be noted that 45 C.F.R. Section 80.7(c) mandates that prompt investigations be undertaken "...whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part." (Appended hereto as Exhibits 1 and 2 are copies of the Special Compliance Reports: Special Compliance Report A entitled "Elementary School Compliance Information (A)" and Special Compliance Report B entitled "Intermediate School, Middle School, Junior High School, and High School Compliance Information (B).") Certain information that is relevant and necessary to this investigation is not sought to be obtained by the Special Compliance Reports because the information is to be obtained from the EEO-5 forms. The EEO-5 forms are a joint reporting requirement of the Equal Employment Opportunity Commission, the Office for Civil Rights, and the National Center for Education Statistics of the Department of Health, Education, and Welfare. The Special Compliance Reports seek to obtain the following data: the race, sex, handicap, and non-English language dominance of individual school populations, of students enrolled in particular programs, and of students who have been subject to certain actions within a school; the types of programs offered by the school; the non-English language capabilities of staff in the school and in certain programs; information on expenditures; information on programs or activities which are disproportionately single-sex or adjusted to maintain a specific male to female ratio;

and other information about the school, e.g., how often its attendance boundaries have been changed in the last five years and the condition of its facilities. The EEO-5 forms seek to obtain information on the race and sex of staff, including full time and part-time staff and new hires.

3. The information to be obtained from the Special Compliance Reports and the EEO-5 forms in addition to other available information will be used to determine whether possible violations exist and whether the defendants are otherwise in compliance with the previously mentioned statutes.

4. On or about February 24, 1976, sufficient copies of the Special Compliance Reports were sent by air to defendants for distribution to all the public schools in the City of New York except the Special Education Schools. The reports were originally scheduled to be completed and returned to the Office of Educational Statistics of the Board of Education by May 3, 1976. Editing and follow-up would then have taken place. To date, these reports have not even been distributed, and unless the reports are distributed immediately, it will not be possible for the Office for Civil Rights to complete this phase of this investigation prior to the close of the school year. The reason is that not only must the reports be completed prior to the close of the school year, but in the instances where reports are returned in an incomplete or unsatisfactory state or where additional information is determined to be necessary, the Office for Civil Rights must have sufficient time to complete the necessary follow-up by the reporting school official before the summer recess. It is essential that the Office for Civil Rights have the Special Compliance Report information completed this school year in order for it to be consistent with the other information we are gathering from the school system (including the information being collected in the sample schools in the six (6) community school districts). It would not be feasible for the school system to provide the necessary information after the close of school this year because actual student enrollments by race, sex, etc., in particular programs and settings are required.

5. Upon information and belief, the EEO-5 forms were received by the defendants sometime during the last two weeks of March 1976. This office has been advised that these forms were distributed on or about May 7, 1976, and are to be returned to the Office of Educational Statistics by May 28, 1976. Thus, very little time prior to the closing of the school year will remain for review and follow-up.

6. The defendants' failure to distribute the Special Compliance Reports is unwarranted in view of the fact that this Office has been working with the New York City education officials since February, 1975.

   (a) In February, 1975, members of the Office for Civil Rights met with the Acting Director of the Office of Educational Evaluation of the Board of Education of the City of New York and the Director of the Office of Educational Statistics of the Board of Education of the City of New York and his staff members to discuss, evaluate, and modify drafts of the Special Compliance Reports. The Office for Civil Rights made every effort in all the meetings which were held to be responsive to the suggestions made. Many problems were discussed and wherever possible, changes suggested by the Board of Education officials were made.

   (b) On March 13, 1975, I sent a letter to Chancellor Irving Anker advising him that as a result of our meetings with his staff and because of our desire to have accurate and complete information, I had decided to delay the distribution of the Special Compliance Reports until the 1975-76 school year. (Letter is attached as Exhibit 3.)

   (c) In anticipation of the Special Compliance Reports, the Office of Educational Statistics modified its own data gathering instruments to collect some of the required information. As a result of this, a portion of the information required on the Special Compliance Reports has already been gathered.

   (d) In February, 1976, another meeting was held with the Office of Educational Statistics. In an effort to avoid duplication

and to lighten the burden on the school system, the Office for Civil Rights agreed not to require the completion of certain items by the schools in which on-site compliance examinations are being conducted. The Office of Educational Statistics finalized amended instructions reflecting those items which were already collected and those which were not being required of the in-depth sample schools. (Amended instructions are appended hereto as Exhibits 4 and 5.)

(e) Also in February 1976, a tentative schedule for dissemination and collection of the reports was developed by the Office for Civil Rights together with the Office of Educational Statistics. This schedule was outlined in a letter dated March 11, 1976, from Richard P. Vigilante, Director, Office of Educational Statistics to Joel W. Barkan, Director, Office for Civil Rights, Region II. (Appended hereto as Exhibit 6.) The Office for Civil Rights further agreed to be available to attend meetings to answer questions about the Special Compliance Reports. A meeting was scheduled for March 18, 1976, and subsequently cancelled by the defendants. On April 1, 1976, a meeting was held at which time representatives of the Office for Civil Rights answered questions posed by school officials. As a result of the delay caused by the defendants, it was necessary to revise the schedule for the distribution and completion of the reports. On April 8, 1976, I sent a letter to Chancellor Anker outlining the revised schedule (appended hereto as Exhibit 7) for the distribution and completion of the Reports.

7. Finally, upon ascertaining that the Reports and EEO-5 forms had not been distributed, on April 30, 1976, I sent a mailgram to Chancellor Anker advising him that if the Special Compliance Reports and the EEO-5 forms were not in the schools by May 5, 1976, it would be necessary to take legal action. (Mailgram appended hereto as Exhibit 8.)

8. In reply to my mailgram, Dr. Bernard R. Gifford, Deputy Chancellor, sent me a letter dated May 3, 1976 (appended hereto as Exhibit 9) wherein defendants requested confidential investigatory data and information concerning complaints of civil rights violations in the New York City public school system. Pursuant to Federal law, this request has been denied. (See Exhibit 10.)

9. As previously indicated, the delay in the distribution of EEO-5 forms and the failure to distribute the Special Compliance Reports have seriously jeopardized the Office for Civil Rights' ability to complete this phase of the investigation prior to the close of the current school year. Should the information sought not be obtained, or only partially obtained, the effectiveness of the government's investigatory efforts will have been substantially impaired and unjustifiably delayed.

10. In this regard, it should be noted that the named defendants were parties to Civil Action 76 C 148, United States of America vs. The Community School Board of Education for New York City School District No. 21, and that if they had any legal objections to the distribution and completion of the Special Compliance Reports, they should have, in good faith, raised those objections in that action rather than to have engaged in dilatory tactics designed to impede and obstruct, if not defeat, this phase of the Office for Civil Rights' investigation of the possible violations of law of the public school system of the City of New York.

11. Because of the brevity of time remaining in the school year, this Office requests the court to exercise its judiciary power in granting the applied for injunctive relief which will assure that:

    (a) the Special Compliance Reports are distributed immediately,

    (b) the completed Special Compliance Reports and EEO-5 forms are returned on or before May 28, 1976 to the Office of Educational Statistics where editing and follow-up will take place, and,

(c) should additional information be necessary for the completion of the forms, the defendants will require that any school personnel designated by the Office for Civil Rights on or before June 30, 1976 as the persons from whom additional information is needed render themselves available after June 30, 1976 to furnish such additional information.

Martin H. Gerry

MARTIN H. GERRY

Sworn to before me this
10th day of May, 1976

Dorraine Hallaway

NOTARY PUBLIC

My Commission Expires June 1, 1978

REPORTING REQUIREMENT:

This report is required by Title VI of the Civil Rights Act of 1964 and by Title IX of the Education Amendments of 1972. Section 80.6(b) of HEW Regulation (45 CFR 80) issued to carry out the purposes of Title VI of the Civil Rights Act of 1964 provides:

Compliance Reports: Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Regulation.

INSTRUCTIONS

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

Required Under Title VI of the Civil Rights Act of 1964
and Under Title IX of the Education Amendments of 1972
U.S. Department of Health, Education, and Welfare
Office for Civil Rights
Washington, D.C.

GENERAL INSTRUCTIONS: Pupil membership data should be as of October 31, 1975, or the nearest possible date to October 31, when membership can be consider stabilized. All compliance information is due January 15, 1976.

Please use a typewriter or print legibly. Make certain the information is clear on all copies.

On all pages following the first page it is sufficient to fill in just city, district (Community or Administrative), and school, instead of the complete address information called for on the first page.

If a school has an annex associated with it, *one* report should be submitted with information on the entire school.

Please be sure that there are no blank spaces left for any of the questions on the forms.

(1) If the answer for a given item and column(s) is "0," write "0" (zero) in the appropriate space(s).

(2) If a particular item or column is not applicable in your case, write "DNA" (does not apply) in the appropriate space(s).

Please check to be sure you have followed these instructions.

SUBMISSION: It is the responsibility of the school system to submit this information by January 15, 1976. The individual schools should return the information to the superintendent's office for forwarding to HEW. Before submitting the information, check the accuracy and completeness of each item, particularly the totals. Errors or omissions may require a refiling. (Keep a copy for future reference).

Race/ethnic designations as used by the Office for Civil Rights do not denote scientific definitions of anthropological origins. For the purpose of this report, a student may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than *one* race/ethnic group.

COLUMN HEADINGS – Pages 1 through 4

Col. I: American Indian or Alaskan Native. A person having origins in any of the original peoples of North America.

Col. II: Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

Col. III: Black, not of Hispanic Origin. A person having origins in any of the black racial groups.

Col. IV: Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture or origin, regardless of race.

Col. V: White, not of Hispanic Origin. A person having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian sub-continent.

Col. VI: Total. Add all individuals entered in Columns I through V.

Col. VII: Total Males. All *males* included in Column VI.

Col. VIII: Total Females. All *females* included in Column VI.

Col. IX: Physically Handicapped. Include pupils who have physical impairments which substantially limit their functioning or performance. Within this definition include: the blind, the visually impaired, the deaf, the hard of hearing, the speech impaired, the crippled, and those having physical health problems resulting from various diseases and conditions.

Cols. X and XI: Spanish Language Dominant. Include those pupils for whom Spanish is the language customarily spoken in their residences. Teachers should use their judgment to determine degree of English language difficulty in the absence of any uniform measure, e.g., a test.

Cols. XII and XIII: Asian Language Dominant. Include those pupils for whom an Asian language is the language customarily spoken in their residences. Teachers should use their judgment to determine degree of English language difficulty in the absence of any uniform measure, e.g., a test.

Cols. XIV and XV: Other Non-English Language Dominant. Include those pupils for whom the language customarily spoken in their residences is one other than Spanish, English, or an Asian language. Teachers should use their judgment to determine the degree of English language difficulty in the absence of any uniform measure, e.g., a test.

COLUMN HEADINGS – Page 5

Col. III: Self-Contained Classroom. A group of students, constituting a class, who spend most of their school day in one classroom with one teacher. They may receive some special instruction in particular areas such as art, music, physical education, etc.

Col. IV: Departmentalization. The organization of instruction whereby teachers specialize in one or two subject areas and give instruction to several classes and/or grades during a school day. Under this plan a student will have a different teacher for almost every subject and will move from class to class throughout the school during the day.

Col. V: Other Organization and/or Scheduling Plan. This category encompasses a variety of organizational alternatives including team or cluster teaching, the house plan, the mini-school, and any plan other than self-contained class and departmentalization.

COLUMN HEADINGS – Pages 6 and 7

Cols. I-IV: Professional Staff. Include those individuals who have regular direct contact with pupils and whose job assignments are included in the following general list: teachers, counselors, librarians, media specialists, curriculum specialists, remedial specialists, audiologists, physicians, dentists, psychiatrists, psychologists, social workers, principals, assistant principals, school nurses.

Cols. V-VIII: Paraprofessional and Non-Professional Staff. Include those individuals who have regular direct contact with pupils and whose job assignments are included in the following general list: teaching assistants, student teachers, teacher-interns, teaching aides, social work aides.

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

(SEE INSTRUCTIONS AND DEFINITIONS)

CITY _____

DISTRICT _____

SCHOOL _____

FOR 1975-1976 (CURRENT SCHOOL YEAR)	PUPILS														
	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
	American Indian or Alaskan Native	Asian or Pacific Islander	Black, not of Hispanic Origin	Hispanic	White, not of Hispanic Origin	TOTAL (Sum of Col. I-V)	Total Males	Total Females	Physically Handicapped	Spanish Language Dominant		Asian Language Dominant		Other Non-English Language Dominant	
										Moderate English Difficulty	Severe English Difficulty	Moderate English Difficulty	Severe English Difficulty	Moderate English Difficulty	Severe English Difficulty
9. d. (UNGRADED SCHOOLS: SEE NOTE 3 BELOW) If ability grouping is *not* practiced in your school, please give enrollment figures for *each section* (by name or number) of the "Second Lowest Grade Offered" (Exclude Pre-K and K in determining the "Second Lowest Grade Offered")															

A-20

NOTES: (3) UNGRADED SCHOOLS: Please give the required information for those three classrooms in your school which have the lowest average ages of pupils. Please indicate in parentheses for each of the three classrooms, the average age (in years and months) of the pupils in that classroom.

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

CITY _____
DISTRICT _____
SCHOOL _____

Please give responses for 1975-1976 (CURRENT SCHOOL YEAR). Figures should reflect number of staff assigned in each item.	STAFFING FIGURES							
	I	II	III	IV	V	VI	VII	VIII
	PROFESSIONAL STAFF				PARAPROFESSIONAL AND NON-PROFESSIONAL STAFF			
	Total Staff Assigned	Total Spanish Fluent	Total Asian Language Fluent	Total Fluent in Other Non-English Languages	Total Staff Assigned	Total Spanish Fluent	Total Asian Language Fluent	Total Fluent in Other Non-English Languages
33. School Staff								
34. "Lowest Grade Offered" - Please indicate Grade ☐ (SEE EARLIER NOTES 1 AND 2) (Exclude Pre-K and K)								
35. "Highest Grade Offered" - Please indicate Grade ☐								
36. Is ability grouping practiced? Yes ☐ No ☐ (If "No" is checked, enter "DNA" in 36a, 36b, and 36c, and complete Item 36d.) If ability grouping is practiced, please enter lowest grade which is ability grouped ☐. If ability grouping is practiced, complete Items 36a, 36b, and 36c. (Note: Item 36d is on Page 7.)								
a. *Most* Advanced Section of lowest grade which is ability grouped.								
b. *Least* Advanced Section of lowest grade which is ability grouped								
c. All Other Sections, if any, of lowest grade which is ability grouped								
37. Remedial and Other Special Reading Classes:								
a. Title I, E.S.E.A. (Full or Partial Federal Funding)								
b. State Reimbursable (Exclude those programs included in 37a)								
c. Non-Reimbursable								
38. Title VII, E.S.E.A. (Bilingual Education)								
39. English as a Second Language Program								
40. Other Bilingual Programs								

A-21

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

CITY _____
DISTRICT _____
SCHOOL _____

Please give responses for the 1975-1976 (CURRENT SCHOOL YEAR)

(No data are to be entered in shaded columns. Appropriate numbers go in Columns I and II.

A checkmark should be entered, wherever applicable, for Columns III-VII.)

	I	II	III	IV	V	VI	VII
			Organization & Scheduling Plans			Student Grouping	
	Total Number of Hours Offered Per Week	Number of Separate Sections	Self-Contained Classroom	Departmentalization	Other Organization and/or Scheduling Plan	Graded	Ungraded
26. "Lowest Grade Offered" - Please indicate Grade ☐ (SEE EARLIER NOTES 1 AND 2 AND NOTE 10 BELOW) (Exclude Pre-K and K)							
27. "Highest Grade Offered" - Please indicate Grade ☐ (SEE EARLIER NOTES 1 AND 2 AND NOTE 10 BELOW)							
28. Remedial and Other Special Reading Classes:							
a. Title I, E.S.E.A. (Full or Partial Federal Funding)							
b. State Reimbursable (Exclude those programs included in 28a)							
c. Non-Reimbursable							
29. Title VII, E.S.E.A. (Bilingual Education)							
30. English as a Second Language Program							
31. Other Bilingual Programs							

NOTES: (10) FOR ITEMS 26 and 27 - Under Column I enter the number of hours the grade is offered per week, not sections of the grade.

32. a. If you have ability grouping in your school (as indicated in Item 9), do you use the results of any tests as a basis for the ability grouping?
Yes ☐ No ☐

b. If "Yes," please check any of the following type (s) of tests that you use:

1) Standardized Group Achievement Test
Yes ☐ No ☐

2) Standardized Group Aptitude Test
Yes ☐ No ☐

3) Other Standardized Group Test
Yes ☐ No ☐

4) Individual Aptitude or Intelligence Test
(NOTE: Include locally devised tests)
Yes ☐ No ☐

5) Other Individually Administered Test
(NOTE: Include locally devised tests)
Yes ☐ No ☐

6) Special Criterion Reference Test
Yes ☐ No ☐

A-22

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

CITY _____

DISTRICT _____

SCHOOL _____

Please give responses for 1975-1976 (CURRENT SCHOOL YEAR). Figures should reflect number of staff assigned in each item.

	STAFFING FIGURES							
	I	II	III	IV	V	VI	VII	VIII
	PROFESSIONAL STAFF				PARAPROFESSIONAL AND NON-PROFESSIONAL STAFF			
	Total Staff Assigned	Total Spanish Fluent	Total Asian Language Fluent	Total Fluent in Other Non-English Languages	Total Staff Assigned	Total Spanish Fluent	Total Asian Language Fluent	Total Fluent in Other Non-English Languages
36. d. (UNGRADED SCHOOLS: SEE EARLIER NOTE 3) If ability grouping is *not* practiced in your school, please give staffing figures for *each section* (by the same name or number used in Item 9d) of the "Second Lowest Grade Offered" (Exclude Pre-K and K in determining the "Second Lowest Grade Offered")								

A-23

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

CITY _____
DISTRICT _____
SCHOOL _____

41. Please list the total expenditures from *state* and *local* education funds during the 1974-75 (PREVIOUS) School Year for each of the following expenditure categories. Include only expenditures from funds allocated directly to the school. (See Instructions for Definitions).

A. Instructional Materials and Books (Other than Personal Services) $ _____
B. Guidance Services (Personal and Other than Personal Services) $ _____
C. Health Services (Personal and Other than Personal Services) $ _____
D. Extra- and Co-Curricular Activities (Personal and Other than Personal Services) $ _____
E. Psychological Services (Personal and Other than Personal Services) $ _____
F. Attendance and Social Work Services (Personal and Other than Personal Services) $ _____
G. Community Services (Personal and Other than Personal Services) $ _____

42. Please Indicate:

a. Total number of physical education classes, sections, or instructional groupings ☐
b. Number of physical education classes, sections, or instructional groupings which are comprised of 80% or more of pupils of one sex ☐

43. Please Indicate:

a. Number of all other classes, sections, or instructional groupings ☐
b. Number of all other classes, sections, or instructional groupings which are comprised of 80% or more of pupils of one sex ☐

44. Please indicate below any instructional or non-instructional program or activity for which enrollment is either a) limited to pupils of one sex, or b) adjusted in order to maintain a ratio of male to female pupils enrolled:

a) Limited to pupils of one sex		b) Adjusted in order to maintain a ratio of male to female pupils	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

45. Please estimate the per cent of all Asian language dominant pupils in the school whose primary language is:

Chinese ____% Japanese ____%
Korean ____% Other ____%

46. Please estimate the per cent of all Asian language fluent instructional staff (professional and paraprofessional) whose primary language is:

Chinese ____% Japanese ____%
Korean ____% Other ____%

47. Please estimate the per cent of Other Non-English language dominant pupils in the school whose primary language is:

French ____% Italian ____% Other ____%
Polish ____% Greek ____%

48. Please estimate the per cent of Other Non-English language fluent instructional staff (professional and paraprofessional) whose primary language is:

French ____% Italian ____% Other ____%
Polish ____% Greek ____%

49. Please estimate the per cent of Spanish-surnamed pupils whose ethnic heritage is:

Mexican-American ____% Central/South American ____%
Puerto Rican ____% Pilipino (Filipino) ____%
Cuban and Other Caribbean ____% Other ____%
Unknown ____%

ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A)

CITY _____

DISTRICT _____

SCHOOL _____

50. Please indicate the total number, and numbers with other Non-English oral language fluency, of professional staff assigned to the programs and activities listed below. (SEE NOTE 11 BELOW)

	Total	Spanish Fluent	Asian Language Fluent	Other Non-English Language Fluent
a. Persons responsible for administering disciplinary policies				
b. Guidance Services				
c. Attendance Services				
d. Psychological/Psychiatric and Psychometric Services				
e. Persons Coordinating Parent-Teacher Activities				
f. Principals/Assistant Principals				
g. Others: (SPECIFY)				
_____				
_____				
_____				
_____				
_____				
_____				
_____				
_____				

51. How many times during the last five years have the attendance boundaries for this school been changed? [ ]

52. Please indicate for 1974-75 the total number of teacher absence days: [ ]

53. Please rate the current condition in your school of each of the following as either:
Excellent (E); Good (G); Fair (F); Poor (P); or Non-Existent (N).
(This should be a rough estimate of the *qualitative* condition, not an appraisal of quantitative adequacy to meet the needs of the population.)

Facility	Condition	Facility	Condition
Lighting (Halls)		Lighting (Classrooms)	
Wiring		Air Conditioning	
Heating		Plumbing	
Cafeteria		Gymnasiums	
Kitchens		Science Labs	
Regular Classrooms		Playgrounds and Athletic Fields	
Language Labs		Athletic Equipment	
Textbooks		Classroom Furniture	
Audio-Visual Equipment		Library Books	

NOTE: (11) If the same person is involved in more than one activity, this should be indicated by showing that person's involvement in one activity as *a fraction* reflecting the amount of his/her time spent in that activity. For example:

If two people are Spanish fluent, and one person spends equal amounts of time in activities a, b, and c, and the other person is involved only in activity a, the numbers to be entered under Spanish Fluent are as follows:

Line a 1 1/3
Line b 1/3
Line c 1/3

I certify that the information given on this and the preceding pages is true and correct to the best of my knowledge and belief. (A willfully false statement is punishable by law [U. S. Code, Title 18 Section 1001].)

Signature of Person Furnishing Information _____ Title _____ Telephone Number _____ Date Signed _____

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

EXHIBIT #2

REPORTING REQUIREMENT:

This report is required by Title VI of the Civil Rights Act of 1964 and by Title IX of the Education Amendments of 1972. Section 80.6(b) of HEW Regulation (45 CFR 80) issued to carry out the purposes of Title VI of the Civil Rights Act of 1964 provides:

Compliance Reports: Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Regulation.

INSTRUCTIONS

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

Required Under Title VI of the Civil Rights Act of 1964 and Under Title IX of the Education Amendments of 1972
U.S. Department of Health, Education, and Welfare
Office for Civil Rights
Washington, D.C.

GENERAL INSTRUCTIONS: Pupil membership data should be as of October 31, 1975, or the nearest possible date to October 31, when membership can be considered stabilized. All compliance information is due January 15, 1976.

Please use a typewriter or print legibly. Make certain the information is clear on all copies.

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If a school has an annex associated with it, *one* report should be submitted with information on the entire school.

Please be sure that there are no blank spaces left for any of the questions on the forms.

(1) If the answer for a given item and column(s) is "0," write "0" (zero) in the appropriate space(s).
(2) If a particular item or column is not applicable in your case, write "DNA" (does not apply) in the appropriate space(s).

Please check to be sure you have followed these instructions.

SUBMISSION: It is the responsibility of the school system to submit this information by January 15, 1976. The individual schools should return the information to the superintendent's office for forwarding to HEW. Before submitting the information, check the accuracy and completeness of each item, particularly the totals. Errors of omissions may require a refiling. (Keep a copy for future reference).

Race/ethnic designations as used by the Office for Civil Rights do not denote scientific definitions of anthropological origins. For the purpose of this report, a student may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than *one* race/ethnic group.

COLUMN HEADINGS – Pages 1 through 4

Cols. I and II: American Indian or Alaskan Native. A person having origins in any of the original peoples of North America. In Column I enter the number of males (M) who are members of this racial/ethnic group, and in Column II enter the number of females (F) who are members of this racial/ethnic group.

Cols. III and IV: Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example China, Japan, Korea, the Philippine Islands, and Samoa. In Column III enter the number of males (M) who are members of this racial/ethnic group, and in Column IV enter the number of females (F) who are members of this racial/ethnic group.

Cols. V and VI: Black, not of Hispanic Origin. A person having origins in any of the black racial groups. In Column V enter the number of males (M) who are members of this racial/ethnic group, and in Column VI enter the number of females (F) who are members of this racial/ethnic group.

Cols. VII and VIII: Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture or origin, regardless of race. In Column VII enter the number of males (M) who are members of this racial/ethnic group, and in Column VIII enter the number of females (F) who are members of this racial/ethnic group.

Cols. IX and X: White, not of Hispanic Origin. A person having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian subcontinent. In Column IX enter the number of males (M) who are members of this racial/ethnic group, and in Column X enter the number of females (F) who are members of this racial/ethnic group.

Cols. XI and XII: Total. In Column XI enter the total number of males (M). This figure should be the sum of Columns I, III, V, VII, and IX. In Column XII enter the total number of females (F). This figure should be the sum of Columns II, IV, VI, VIII, and X.

Column XIII: Physically Handicapped. Include pupils who have physical impairments which substantially limit their functioning or performance. Within this definition include: the blind, the visually impaired, the deaf, the hard of hearing, the speech impaired, the crippled, and those having special physical health problems resulting from various diseases and conditions.

Col. XIV: Spanish Language Dominant. Include those pupils for whom Spanish is the language customarily spoken in their residences.

Col. XV: Asian Language Dominant. Include those pupils for whom an Asian language is the language customarily spoken in their residences.

Col. XVI: Other Non-English Language Dominant. Include those pupils for whom the language customarily spoken in their residences is one other than Spanish, English, or an Asian language.

COLUMN HEADINGS – Page 5

Cols. I-IV: Professional Staff. Include those individuals who have regular direct contact with pupils and whose job assignments are included in the following general list: teachers, counselors, librarians, media specialists, curriculum specialists, remedial specialists, audiologists, physicians, dentists, psychiatrists, psychologists, social workers, principals, assistant principals, school nurses.

Cols. V-VIII: Preprofessional and Non-Professional Staff. Include those individuals who have regular direct contact with pupils and whose job assignments are included in the following general list: teaching assistants, student teachers, teacher-interns, teaching aides, social work aides.

ITEMS

Even if the forms are pre-labeled, all of Items 1-5 must be completed.

ITEM 1 Use the school system name your State uses in its published official listing of its school districts.

ITEM 2 State the name of the school.

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

(SEE INSTRUCTIONS AND DEFINITIONS)

CITY _____

DISTRICT _____

SCHOOL _____

FOR 1975-1976 (CURRENT SCHOOL YEAR)

	PUPILS															
	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV	XVI
	American Indian or Alaskan Native		Asian or Pacific Islander		Black, not of Hispanic Origin		Hispanic		White, not of Hispanic Origin		Total (sum of Columns I-X)		Physically Handicapped	Spanish Language Dominant	Asian Language Dominant	Other Non-English Language Dominant
	M	F	M	F	M	F	M	F	M	F	M	F				
20. Pupils in Membership: Work Study Programs																
21. Pupils in Membership: Extra-and/or Co-Curricular Athletics (not for credit)																
22. a. Number of Pupils in "Lowest Grade Offered" who read 1 to 2 years below grade level (SEE NOTES 3 AND 4 BELOW)																
b. Enter total number of pupils in "Lowest Grade Offered" for whom reading achievement information is available ☐ (SEE NOTES 3 AND 4 BELOW)																
23. Number of Pupils in "Lowest Grade Offered" who read *more than* 2 years below grade level (SEE NOTES 3 AND 4 BELOW)																
24. a. Number of Pupils in "Highest Grade Offered" who read 1 to 2 years below grade level (SEE NOTES 3 AND 5 BELOW)																
b. Enter total number of pupils in "Highest Grade Offered" for whom reading achievement information is available ☐ (SEE NOTES 3 AND 5 BELOW)																
25. Number of Pupils in "Highest Grade Offered" who read *more than* 2 years below grade level (SEE NOTES 3 AND 5 BELOW)																
26. Number of Pupils receiving Special Reading Skill Instruction																

A-28

NOTES: (3) GRADED SCHOOLS: FOR ITEMS 22-25 - Data should reflect reading levels of pupils currently in the specified grades, even though the most recent test scores for those pupils may be from the previous school year.

(4) UNGRADED SCHOOLS: FOR ITEMS 22a, 22b, and 23 - Submit the required information for the classroom with the lowest average age of pupils for whom a reading achievement assessment has been made.

(5) UNGRADED SCHOOLS: FOR ITEMS 24a, 24b, and 25 - Submit the required information for the classroom with the highest average age of pupils for whom a reading achievement assessment has been made.

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

(SEE INSTRUCTIONS AND DEFINITIONS)

CITY _____

DISTRICT _____

SCHOOL _____

FOR 1975-1976 (CURRENT SCHOOL YEAR)	PUPILS															
	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV	XVI
	American Indian or Alaskan Native		Asian or Pacific Islander		Black, not of Hispanic Origin		Hispanic		White, not of Hispanic Origin		Total (sum of Columns I-X)		Physically Handicapped	Spanish Language Dominant	Asian Language Dominant	Other Non-English Language Dominant
	M	F	M	F	M	F	M	F	M	F	M	F				
27. Pupils in Membership: Special Education programs and classes:																
a. Number of Pupils in programs for EMR or EMH																
b. Number of Pupils in TMR or TMH classes																
c. Number of Pupils in programs for the emotionally disturbed, socially maladjusted, underachievers, and/or slow learners																
d. Number of Pupils in programs for physical, health, sensory and related handicaps																
e. Number of Pupils in programs for specific learning disabilities																
FOR 1974-1975 (PREVIOUS SCHOOL YEAR)																
28. Total Intra-District/Intra-City Transfers *to* this school. (If *Middle, Intermediate, or Junior High School*, SEE NOTE 6 BELOW) (If *High School*, SEE NOTE 7 BELOW)																
29. Intra-District/Intra-City Transfers *to* this school for curricular reasons																
30. Total Intra-District/Intra-City Transfers *from* this school. (If *Middle, Intermediate, or Junior High School*, SEE NOTE 8 BELOW) (If *High School*, SEE NOTE 9 BELOW)																
31. Intra-District/Intra-City Transfers *from* this school for curricular reasons																
32. Admissions *from* this school to limited enrollment high schools (SEE NOTE 10 BELOW)																

A-29

NOTES:

(6) For Middle, Intermediate, and Junior High Schools, ON ITEMS 28 and 29: Intra-district transfers to school - 1974-75: Include those pupils who came to this school from another school within the same Community School District (New York) or Administrative District (Philadelphia) during the 1974-75 school year and whose entrance was not the result of normal promotion or progression to a higher level school.

(7) For High Schools, ON ITEMS 28 and 29: Intra-city transfers to school - 1974-75: Include those pupils who came to this school from another high school in this city during the 1974-75 school year and whose entrance was not the result of normal promotion or progression to a higher level school.

(8) For Middle, Intermediate, and Junior High Schools, ON ITEMS 30 and 31: Intra-district transfers from school - 1974-75: Include those pupils who left this school to go to another school within the same Community School District (New York) or Administrative District (Philadelphia) and whose departure was not the result of normal promotion or progression to a higher level school.

(9) For High Schools, ON ITEMS 30 and 31: Intra-city transfers from school - 1974-75: Include those pupils who left this school to go to another high school in this city during the 1974-75 school year and whose departure was not the result of normal promotion or progression to a higher level school.

(10) For purposes of Item 32 a limited enrollment high school is defined as a high school for which the criteria for admission include scoring above a certain grade on a competitive exam. Include both transfers from this school and students who progressed from this school to a limited enrollment high school.

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

(SEE INSTRUCTIONS AND DEFINITIONS)

CITY _____

DISTRICT _____

SCHOOL _____

FOR 1974-1975 (PREVIOUS SCHOOL YEAR)

	PUPILS															
	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV	XVI
	American Indian or Alaskan Native		Asian or Pacific Islander		Black, not of Hispanic Origin		Hispanic		White, not of Hispanic Origin		Total (sum of Columns I-X)		Physically Handicapped	Spanish Language Dominant	Asian Language Dominant	Other Non-English Language Dominant
	M	F	M	F	M	F	M	F	M	F	M	F				
33. Number of Pupils who graduated from this school																
34. Number of Pupils referred for Mental Health Services																
35. Total Dropouts (SEE NOTE 11 BELOW)																
36. Number of Pupils suspended for at least one day, but not more than 20 consecutive school days during the previous school year																
37. Number of Pupils suspended for more than 20 consecutive school days during the previous school year																
38. Number of Pupils suspended for a total of more than 20 school days (not consecutive school days) during the previous school year (DO NOT INCLUDE PUPILS REPORTED IN ITEM 37)																
39. Total number of suspension days during the previous school year																
40. Number of Pupils referred to Drug/Alcohol Abuse Treatment Programs																
41. Non-Promotions in Lowest Grade (UNGRADED SCHOOLS: ENTER "DNA")																
42. Non-Promotions in Highest Grade (UNGRADED SCHOOLS: ENTER "DNA")																

NOTES: (11) Dropouts are students who withdrew from this school and did not transfer to another intermediate, middle, junior high, high, or special education school.

A-30

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (LEGAL)

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

(SEE INSTRUCTIONS AND DEFINITIONS)

CITY _____

DISTRICT _____

SCHOOL _____

Please give responses for 1975-1976 (CURRENT SCHOOL YEAR). Figures should reflect number of staff assigned in each item.

STAFFING FIGURES

	I	II	III	IV	V	VI	VII	VIII
	PROFESSIONAL STAFF				PARAPROFESSIONAL AND NON-PROFESSIONAL STAFF			
	Total Staff Assigned	Total Spanish Fluent	Total Asian Language Fluent	Total Fluent in Other Non-English Languages	Total Staff Assigned	Total Spanish Fluent	Total Asian Language Fluent	Total Fluent in Other Non-English Languages
43. School Staff								
44. Title I, E.S.E.A. (Full or Partial Federal Funding)								
45. Title VII, E.S.E.A. (Bilingual Education)								
46. English as a Second Language Program								
47. Other Bilingual Programs								
48. Laboratory Science Courses								
49. Home Economics Courses								
50. Vocational Courses (other than Home Economics)								
51. Mathematics Courses								

A-31

ORIGINAL — RETURN TO OFFICE FOR CIVIL RIGHTS (OCR)

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

CITY _____
DISTRICT _____
SCHOOL _____

52. Please list the total expenditures from *state* and *local* education funds during the 1974-75 (PREVIOUS) School Year for each of the following expenditure categories. Include only expenditures from funds allocated directly to the school. (See Instructions for Definitions).

A. Instructional Materials and Books (Other than Personal Services) $ _____
B. Guidance Services (Personal and Other than Personal Services) $ _____
C. Health Services (Personal and Other than Personal Services) $ _____
D. Extra- and Co-Curricular Activities (Personal and Other than Personal Services) $ _____
E. Psychological Services (Personal and Other than Personal Services) $ _____
F. Attendance and Social Work Services (Personal and Other than Personal Services) $ _____
G. Community Services (Personal and Other than Personal Services) $ _____

53. Please Indicate:

a. Total number of physical education classes, sections, or instructional groupings [ ]
b. Number of physical education classes, sections, or instructional groupings which are comprised of 80% or more of pupils of one sex [ ]

54. Please Indicate:

a. Number of all other classes, sections, or instructional groupings [ ]
b. Number of all other classes, sections, or instructional groupings which are comprised of 80% or more of pupils of one sex [ ]

55. Please indicate below any instructional or non-instructional program or activity for which enrollment is either a) limited to pupils of one sex, or b) adjusted in order to maintain a ratio of male to female pupils enrolled:

a) Limited to pupils of one sex		b) Adjusted in order to maintain a ratio of male to female pupils	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

56. Please estimate the per cent of all Asian language dominant pupils in the school whose primary language is:

Chinese _____% Japanese _____%
Korean _____% Other _____%

57. Please estimate the per cent of all Asian language fluent instructional staff (professional and paraprofessional) whose primary language is:

Chinese _____% Japanese _____%
Korean _____% Other _____%

58. Please estimate the per cent of Other Non-English language dominant pupils in the school whose primary language is:

French _____% Italian _____% Other _____%
Polish _____% Greek _____%

59. Please estimate the per cent of Other Non-English language fluent instructional staff (professional and paraprofessional) whose primary language is:

French _____% Italian _____% Other _____%
Polish _____% Greek _____%

60. Please estimate the per cent of Spanish-surnamed pupils whose ethnic heritage is:

Mexican-American _____% Central/South American _____%
Puerto Rican _____% Pilipino (Filipino) _____%
Cuban and Other Caribbean _____% Other _____%
Unknown _____%

INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B)

CITY _____
DISTRICT _____
SCHOOL _____

61. Please indicate the total number, and numbers with other Non-English oral language fluency, of professional staff assigned to the programs and activities listed below. (SEE NOTE 12 BELOW)

	Total	Spanish Fluent	Asian Language Fluent	Other Non-English Language Fluent
a. Persons responsible for administering disciplinary policies				
b. Guidance Services				
c. Attendance Services				
d. Psychological/Psychiatric and Psychometric Services				
e. Persons Coordinating Parent-Teacher Activities				
f. Principals/Assistant Principals				
g. Others: (SPECIFY)				
_____				
_____				
_____				
_____				
_____				
_____				
_____				
_____				

62. How many times during the last five years have the attendance boundaries for this school been changed? [ ] .

63. Please indicate for 1974-75 the total number of teacher absence days: [ ]

64. Please rate the current condition in your school of each of the following as either:
Excellent (E); Good (G); Fair (F); Poor (P); or Non-Existent (N).
(This should be a rough estimate of the *qualitative* condition, not an appraisal of quantitative adequacy to meet the needs of the population.)

Facility	Condition	Facility	Condition
Lighting (Halls)		Lighting (Classrooms)	
Wiring		Air Conditioning	
Heating		Plumbing	
Cafeteria		Gymnasiums	
Kitchens		Science Labs	
Regular Classrooms		Playgrounds and Athletic Fields	
Language Labs		Athletic Equipment	
Textbooks		Classroom Furniture	
Audio-Visual Equipment		Library Books	

NOTE: (12) If the same person is involved in more than one activity, this should be indicated by showing that person's involvement in one activity as *a fraction* reflecting the amount of his/her time spent in that activity. For example:

If two people are Spanish fluent, and one person spends equal amounts of time in activities a, b, and c, and the other person is involved only in activity a, the numbers to be entered under Spanish Fluent are as follows:

Line a 1 1/3
Line b 1/3
Line c 1/3

I certify that the information given on this and the preceding pages is true and correct to the best of my knowledge and belief. (A willfully false statement is punishable by law [U. S. Code, Title 18 Section 1001].)

Signature of Person Furnishing Information	Title	Telephone Number	Date Signed

ORIGINAL - RETURN TO OFFICE FOR CIVIL RIGHTS (OCR)

EXHIBIT #3

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

MAR 13 1975

Chancellor Irving Anker
Board of Education
of the City of New York
110 Livingston Street
Brooklyn, New York 11201

Dear Chancellor Anker:

As you are aware, the Office for Civil Rights did not distribute the 1974 Elementary and Secondary Civil Rights Survey to New York City last fall as we had done in prior years. The reason we did not do so was because we hoped to collect additional information needed for the ongoing compliance investigation by means of a Special Compliance Report which would have accompanied the Form OS/CR 102 to the individual school campuses.

As a result of a meeting with Dr. Polemeni and subsequent discussions with staff of the Bureau of Educational Program, Research and Statistics concerning the Special Report, it became apparent that major problems might be generated by a request from this office to distribute and collect additional reports from the district by the end of the current school year. In light of our desire to have accurate and complete information, we have agreed to delay our request for completion of the Special Compliance Report until next Fall. Consequently, we will forward the Form OS/CR 101 (School System Summary Report) and Form OS/CR 102 (Individual School Campus Report) to you as soon as possible to allow sufficient time to collect this information for the current school year, and, accordingly, we would appreciate receiving a notification from you at your earliest convenience as to whom and where the forms should be delivered. As soon as such notification is received, we will deliver the labeled forms to the person or persons so designated. The "Due Date" for completed forms to be returned to the Office for Civil Rights is now May 1, 1975, not October 15, 1974 as is printed on the forms. Information for all items should be given as of April 1, 1975, or the nearest closing register date not more than two weeks before or after April 1, 1975.

Enclosed are three (3) copies of Form OS/CR 101 (School System Summary Report) and Form OS/CR 102 (Individual School Campus Report). The only changes which need to be made are those modifications in the reporting and due dates which I mentioned above.

If you have any questions concerning the Forms OS/CR 101 and 102, please let us know as soon as possible. Ms. Nilda Koenig, Acting Chief of the Elementary and Secondary Education Branch, and Project Director for the New York City Equal Educational Services Review will be coordinating this matter in New York and can be reached at Area Code (212) 264-9367. It may facilitate matters for the Office for Civil Rights and Opportunity Systems, Inc. (the contractor involved in the Survey) to meet with some of your staff to work out any necessary details. We would be happy to do so, and ask only that, in the interest of time, any meetings occur as soon as possible.

Thank you for your continued cooperation.

Sincerely,

Martin H. Gerry
Deputy Director
Office for Civil Rights

Enclosures

cc: Dr. Anthony Polemeni

EXHIBIT #4

Addendum to Special Circular No. , 1975-1976 (A)

AMENDED INSTRUCTIONS FOR COMPLETING THE 1975 OCR ELEMENTARY SCHOOL COMPLIANCE INFORMATION REPORT (A)

IMPORTANT: Detailed instructions for completing the Elementary School Compliance Information Report (A) are furnished by the Office for Civil Rights (OCR) on the cover sheets of that form. Please refer to them as your primary source of information. All questions must be answered as directed on the OCR report form, unless specific directions to the contrary appear in this set of instructions. The additional directions and emendations outlined below apply specifically to the New York City School system.

PLEASE READ THESE INSTRUCTIONS IN CONJUNCTION WITH THE INSTRUCTIONS ON THE CIVIL RIGHTS FORM.

Item No.	Instruction

(NOTE: All items, as well as all columns within each item, are to be completed unless there are specific instructions below to the contrary. For example, items 3, 4, 5 are to completed although no reference to them appears in these instructions.)

1. ENTER: "New York City"

2. ENTER: Name of School; School Number; District Number

6. ENTER: "10/31/75" as register date. (This date applies to data which will be furnished by the Board of Education. All pupil and staff data entered by the schools on the report form will be as of March 31, 1976.)

COLUMNS I - VIII: Leave Blank.

COLUMN IX: Enter total of physically handicapped pupils in Special Education Classes and/or in regular classes. Count each pupil only once. Data on physically handicapped pupils in regular classes or grades may be obtained from teacher observation and pupil records only.

NOTE: In succeeding items in which data on physically handicapped pupils are requested by grade, do not include pupils in Special Education Classes.

COLUMNS X - XV: Enter data. Information regarding "Language Dominance" and ability to speak English may be obtained from Pupil Record Cards, Language Assessment Battery (Lab) Tests, Rating Scale of Pupil's Ability to Speak English. In the absence of a recorded test score or evaluation, the classroom teacher's judgement may be used, as directed in OCR instructions (This applies to Columns X - XV in all succeeding items.)

7. ENTER: Required grade in box provided on report form. If "U" is entered also write official designation of classroom being reported.

COLUMNS I - VIII: Leave Blank.

COLUMN IX: For the grade being reported, enter only physically handicapped pupils in regular grades. Do not include Special Education Classes. (This instruction applies to Column IX in all succeeding items except Item 19.)

COLUMNS X - XV: Complete.

8. ENTER: Required grade information in box provided on the report form. If "U" is entered, also write official designation of classroom being reported.

COLUMNS I - VIII: Leave Blank.

COLUMNS IX - XV: Complete.

9. CHECK: "Yes" or "No" and follow OCR instructions.

9.a. COLUMNS I - VIII: Leave Blank.

COLUMNS IX - XV: Complete. Refer to Board of Education's "Official Class Audits" (Form C), October 31, 1975, for the lowest grade which is ability grouped. Answer for official class in which Code "O" was assigned in Box 25, "Ability Level", of Form C.

(Continued on Reverse Side)

9.b. COLUMNS I - VIII: Leave Blank.

COLUMNS IX - XV: Complete. Refer to Form C (see Item 9.a. on previous page) Answer for the official class in which Code "1" was assigned in Box 25, "Ability Level".

9.c. COLUMNS I - VIII: Leave Blank.

COLUMNS IX - XV: Complete. Refer to Form C (as above). Answer for the official class(es) if any in which Code "2" was assigned in Box 25 of Form C.

9.d. Refer to OCR instructions to determine sections or classes to be reported.

GRADED SCHOOLS IN WHICH ABILITY GROUPING IS NOT PRACTICED.

Refer to Official Class Audits (Form C). List classes within "second lowest" grade" by the grade and official class designations assigned in box 15-17 and 18-24 of Form C.

UNGRADED SCHOOLS. List the three classes being reported. Use grade and official class designations on Form C.

COLUMNS I - VIII: Leave Blank.

COLUMNS IX - XV: Enter figures for the classes listed.

10-14. COLUMNS I - XV: Complete all columns.

15.a. COLUMNS I - XV: Complete all columns. Use most recent test data available for pupils in "highest grade offered." Reading retardation will be as of the date on which the test was given. The attachment, "Pupils Reading Below Grade Level - Elementary Schools" (Tables A.1 and A.2) will assist school personnel in identifying those pupils reading ½ to 1½ years below grade level

EXAMPLE: In a school with K-6 Grade Span, Grade 6 is the "highestgrade offered". Data will be entered in Columns I - XV for Grade 6 pupils whose most recent reading test scores indicate that they are reading ½ to 1½ years below grade level. Table A.1 displays reading retardation scores for the Metropolitan Achievement Test (MAT) and the New York City (Stanford) Test. Table A.2 displays reading retardation scores for the Science Research Associates (SRA) Test.

16. COLUMNS I - XV: Complete all columns.

EXAMPLE: If "highest grade offered" is the 6th grade, data will be entered in Columns I - XV for Grade 6 pupils whose most recent reading test scores indicate that they are reading more than 1½ years below grade level. Refer to Table A.1 and A.2 as indicated in 15.a. above.

17.a. Refer to notes 6 and 7 on OCR report form to determine "third lowest grade".

COLUMNS I - XV: Complete all columns.

EXAMPLE: In a school with a K-6 grade span, Grade 3 will be the "third lowest grade". Refer to Reading Tables A.1 and A.2 to identify those third grade pupils whose most recent test scores indicate that they are reading ½ to 1½ years below grade level.

18. COLUMNS I - XV: Complete all columns.

EXAMPLE: In a school with a K-6 grade span, third Grade pupils will be accounted for in Columns I - XV if their most recent test scores indicate that they are reading more than 1½ years below grade level.

19.a,b,c, d,e. COLUMNS I - VIII: Leave Blank.

COLUMNS IX - XV: Complete. Report only those pupils in Special Education classes. Refer to Official Class Audit Reports - October 31, 1975 (Form C) to identify those classes which are assigned a Special Education Program Code Number in Grade Box (15-17). Do not include Code 710 (Junior Guidance). The instructions on the following pages will help in determining the proper line(s) of Item 19 (a-e) of the Civil Rights Report to be completed. Please read through all categories (a-e) before entering figures. Pupils are to be entered according to their primary handicap.

19.a. Report on this line "CRMD" and "Double-Handicapped" classes designated as "Educable Mentally Retarded".

19.b. Report on this line "CRMD" and "Double-Handicapped" classes designated as "Trainable Mentally Retarded".

19.c. Report on this line classes designated as A or B centers, Transitional classes, readiness, Teacher-moms.

Do not include on Line 19.c. those pupils designated as "Neurologically Impaired - Emotionally Handicapped". They are to be entered on Line 19.e.

19.d. Report on this line pupils in classes designated as "Health Conservation", "Health Conservation 20".

COLUMN IX: Leave Blank.

19.e. Report on this line pupils in classes designated as "Neurologically Impaired - Emotionally Handicapped", "Pre-Placement", "Health Conservation 30".

20. & 21. COLUMNS I - XV: Complete all columns.

22. & 23. LEAVE BLANK.

24. & 25. COLUMNS I - XV: Complete all columns.

26-40. Refer to OCR instructions to complete these items.

41. Do not include Federally-funded programs. Account only for expenditures from funds allocated directly to the school. Note that line A does not include teacher's salaries.

42. Report only those classes actually designated as "physical education" classes. Count each class, or group, only once. Do not multiply by the number of times per week the class meets.

43. "All other classes, etc" means other than physical education classes. Include official classes, library classes, music classes, etc. Count each class or group only once. Do not multiply by the number of times per week the class meets.

44-51. and 53. Refer to OCR instructions and definitions to complete these items.

52. "Number of Teacher Absence Days" - Leave Blank.

REVIEW OF FORM PLEASE CHECK THE FORM TO ENSURE THAT ALL ITEMS HAVE BEEN COMPLETED. THE ONLY BLANK SPACES WILL BE THOSE WHICH THESE INSTRUCTIONS HAVE SPECIFICALLY DESIGNATED AS SPACES OR COLUMNS TO BE LEFT BLANK. ALL OTHER SPACES WILL CONTAIN EITHER: the data requested, or "0" (ZERO), OR "DNA" (DOES NOT APPLY).

SIGNATURE: The Principal will sign on the line provided on the last page of the report form. The Coordinator (e.g. assistant principal, teacher-in-charge, school secretary) who prepared the report will furnish his (her) name and school title in the space directly below the Principal's signature.

SPECIAL CIRCULAR Detailed instructions concerning the due dates for the completion of the OCR Compliance Information Report, and the procedures for returning the completed form, are provided in Special Circular No.____, 1975-1976, which accompanies these Amended Instructions.

QUESTIONS: If any questions concerning these instructions should arise, please contact the Project Coordinator whose name and address appears below.

Mrs. Diane May
Board of Education of the City of New York
110 Livingston Street, Room 711
Brooklyn, New York 11201

Telephone: 596-4068; 596-4070

CIVIL RIGHTS SURVEY DATA COLLECTION FORM (A)
ELEMENTARY SCHOOL CLASSES

March 1976

ITEM NO. _____ DESCRIPTION _____

GRADE _____ CLASS _____ TEACHER _____

The ethnic and/or physical and/or language data to be entered on this form are required by the Office for Civil Rights in its 1975 Elementary School Compliance Information Report.

The ethnic data are to be obtained by teacher observation only. Do not ask anyone his or her race or ancestry. Data on pupils' language dominance, language fluency, and physical condition may be obtained from test scores and/or other notations on pupil record cards. In the absence of such tests or records, the teacher's personal evaluation will serve as the criterion.

A-41

Complete all Columns (I - XV) except in those cases in which Columns I - VIII have been "lined out". Enter data for the pupils in the grade and class designated above who are included in the "Description" above. (Example: Grade 3, Class 301, "Pupils reading more than 1½ years below grade level."

NUMBER OF PUPILS WITHIN EACH CATEGORY														
I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
American Indian or Alaskan Native	Asian or Pacific Islander	Black, not of Hispanic Origin	Hispanic	White, not of Hispanic Origin	TOTAL (Sum of Col. I-V)	TOTAL Males	TOTAL Females	Physically Handicapped	Spanish Language Dominant		Asian Language Dominant		Other Non-English Language Dominant	
									Moderate English Difficulty	Severe English Difficulty	Moderate English Difficulty	Severe English Difficulty	Moderate English Difficulty	Severe English Difficulty

FOR READING RETARDATION QUESTIONS ONLY: Enter also the total number of pupils for whom reading achievement data is available ☐

Please return this form to the office indicated below:

TABLE A.1 AND INSTRUCTIONS

PUPILS READING BELOW GRADE LEVEL-ELEMENTARY SCHOOLS
NEW YORK CITY (STANFORD) READING COMPREHENSION SCORES
OR
METROPOLITAN ACHIEVEMENT TEST (MAT) TOTAL READING SCORES

THIS TABLE WILL ASSIST SCHOOLS IN RESPONDING TO ITEMS 15, 16, 17, 18 OF THE OCR ELEMENTARY SCHO COMPLIANCE INFORMATION (A) REPORT.

HOW TO USE TABLE A.1

1. The column headed "Time of Testing" refers to the grade and month in which the pupil took the test. For the NYC Test (Stanford) and the MAT, the months are numbered as indicated on the chart directly below:

NYC AND MAT MONTH/NUMBER CHART

September	= month 0	February	= month 5
October	= month 1	March	= month 6
November	= month 2	April	= month 7
December	= month 3	May	= month 8
January	= month 4	June	= month 9

EXAMPLE: For a pupil who took the NYC or the MAT Test in Grade 4 in April, the "Time of Testing" was 4.7. (The grade is 4; the month is 7).

2. The two "Scores" columns will identify those pupils reading either "½ to 1½ years below grade level" or "more than 1½ years below grade level".

EXAMPLE: A pupil took the NYC Test in Grade 5 in April. (The "Time of Testing" was 5.7.) The pupil's reading comprehension score was 4.3.

Find 5.7 in the "Time of Testing" column. Read along the 5.7 line to see if the score 4.3 is either within the "½ to 1½ years below grade level" range or is "more than 1½ years below grade level".
Since 4.3 falls within the 5.2-4.2 range, that pupil will be included in the group identified as reading ½ to 1½ years below grade level.

EXAMPLE: A pupil took the MAT in Grade 6 in June. (The "Time of Testing" was 6.9.) The pupil's reading score was 5.1. Find 6.9 in the "Time of Testing" column. Read along the 6.9 line to see if the score 5.1 is either within the "½ to 1½ years below grade level" range or is "more than 1½ years below grade level."
Since any score 5.3 or less is more than 1½ years below grade level, the pupil with the 5.1 score will be included in the group identified as reading more than 1½ years below grade level.

TABLE A.1 - NYC/MAT SCORES

Time Of Testing Grade/Month	SCORES ½ To 1½ Years Below Grade Level.*	SCORES More Than 1½ Years Below Grade Level.
2.7	2.2-1.2	1.1 or less
2.8	2.3-1.3	1.2 or less
2.9	2.4-1.4	1.3 or less
3.0	2.5-1.5	1.4 or less
3.1	2.6-1.6	1.5 or less
3.2	2.7-1.7	1.6 or less
3.3	2.8-1.8	1.7 or less
3.4	2.9-1.9	1.8 or less
3.5	3.0-2.0	1.9 or less
3.6	3.1-2.1	2.0 or less
3.7	3.2-2.2	2.1 or less
3.8	3.3-2.3	2.2 or less
3.9	3.4-2.4	2.3 or less
4.0	3.5-2.5	2.4 or less
4.1	3.6-2.6	2.5 or less
4.2	3.7-2.7	2.6 or less
4.3	3.8-2.8	2.7 or less
4.4	3.9-2.9	2.8 or less
4.5	4.0-3.0	2.9 or less
4.6	4.1-3.1	3.0 or less
4.7	4.2-3.2	3.1 or less
4.8	4.3-3.3	3.2 or less
4.9	4.4-3.4	3.3 or less
5.0	4.5-3.5	3.4 or less
5.1	4.6-3.6	3.5 or less
5.2	4.7-3.7	3.6 or less
5.3	4.8-3.8	3.7 or less
5.4	4.9-3.9	3.8 or
5.5	5.0-4.0	3.9 or
5.6	5.1-4.1	4.0 or
5.7	5.2-4.2	4.1 or less
5.8	5.3-4.3	4.2 or less
5.9	5.4-4.4	4.3 or less
6.0	5.5-4.5	4.4 or less
6.1	5.6-4.6	4.5 or less
6.2	5.7-4.7	4.6 or less
6.3	5.8-4.8	4.7 or less
6.4	5.9-4.9	4.8 or less
6.5	6.0-5.0	4.9 or less
6.6	6.1-5.1	5.0 or less
6.7	6.2-5.2	5.1 or less
6.8	6.3-5.3	5.2 or less
6.9	6.4-5.4	5.3 or less
7.0	6.5-5.5	5.4 or less
7.1	6.6-5.6	5.5 or less
7.2	6.7-5.7	5.6 or less
7.3	6.8-5.8	5.7 or less
7.4	6.9-5.9	5.8 or less
7.5	7.0-6.0	5.9 or less
7.6	7.1-6.1	6.0 or less
7.7	7.2-6.2	6.1 or less
7.8	7.3-6.3	6.2 or less
7.9	7.4-6.4	6.3 or less
8.0	7.5-6.5	6.4 or less
8.1	7.6-6.6	6.5 or less
8.2	7.7-6.7	6.6 or less
8.3	7.8-6.8	6.7 or less
8.4	7.9-6.9	6.8 or less
8.5	8.0-7.0	6.9 or less
	8.1-7.1	7.0 or less
	8.2-7.2	7.1 or less
8.8	8.3-7.3	7.2 or less
8.9	8.4-7.4	7.3 or less

TABLE A.2 AND INSTRUCTIONS

PUPILS READING BELOW GRADE LEVEL-ELEMENTARY SCHOOLS

SCIENCE RESEARCH ASSOCIATES (SRA) TOTAL READING SCORES

THIS TABLE IS APPLICABLE ONLY IF NO NYC OR MAT TEST SCORE IS AVAILABLE

THIS TABLE WILL ASSIST SCHOOLS IN RESPONDING TO ITEMS 15, 16, 17, 18 OF THE OCR ELEMENTARY SCHOOL COMPLIANCE INFORMATION (A) REPORT.

HOW TO USE TABLE A.2

1. The column headed "Time of Testing" refers to the grade and month in which the pupil took the test. For the Science Research Associates (SRA) Test, the months are numbered as indicated on the chart directly below:

SRA MONTH/NUMBER CHART

September 1	- October 14	= month 1		February 15	- March 14	= month 6
October 15	- November 14	= month 2		March 15	- April 14	= month 7
November 15	- December 14	= month 3		April 15	- May 14	= month 8
December 15	- January 14	= month 4		May 15	- June 30	= month 9
January 15	- February 14	= month 5				

(Note that this differs from the NYC/MAT month designations as described in Table A.1.)

EXAMPLE: For a pupil who took the SRA Test in Grade 2 on April 13, the "Time of Testing" was 2.7. (The grade is 2; the month is 7.)

2. The two "Scores" columns will identify those pupils reading either "½ to 1½ years below grade level" or "more than 1½ years below grade level".

EXAMPLE: A pupil took the SRA Test in Grade 5 on October 15. (The "Time of Testing was 5.2.) The pupils's total reading score was 4.2.

Find 5.2 in the "Time of Testing" column. Read along the 5.2 line to see if the score 4.2 is either within the "½ to 1½ years below grade level" range or is "more than 1½ years below grade level".

Since 4.2 falls within the 4.6-3.6 range, that pupil will be included in the group identifi as reading "½ to 1½ years below grade level".

TABLE A.2 - SRA SCORES

Time of Testing Grade/Month	SCORES ½ To 1½ Years Below Grade Level.*	SCORES More Than 1½ Years Below Grade Level.
2.1	1.5-0.5	0.4 or less
2.2	1.6-0.6	0.5 or less
2.3	1.7-0.7	0.6 or less
2.4	1.8-0.8	0.7 or less
2.5	1.9-0.9	0.8 or less
2.6	2.1-1.1	0.9 or less
2.7	2.2-1.2	1.1 or less
2.8	2.3-1.3	1.2 or less
2.9	2.4-1.4	1.3 or less
3.1	2.5-1.5	1.4 or less
3.2	2.6-1.6	1.5 or less
3.3	2.7-1.7	1.6 or less
3.4	2.8-1.8	1.7 or less
3.5	2.9-1.9	1.8 or less
3.6	3.1-2.1	1.9 or less
3.7	3.2-2.2	2.1 or less
3.8	3.3-2.3	2.2 or less
3.9	3.4-2.4	2.3 or less
4.1	3.5-2.5	2.4 or less
4.2	3.6-2.6	2.5 or less
4.3	3.7-2.7	2.6 or less
4.4	3.8-2.8	2.7 or less
4.5	3.9-2.9	2.8 or less
4.6	4.1-3.1	2.9 or less
4.7	4.2-3.2	3.1 or less
4.8	4.3-3.3	3.2 or less
4.9	4.4-3.4	3.3 or
5.1	4.5-3.5	3.4 or
5.2	4.6-3.6	3.5 or
5.3	4.7-3.7	3.6 or less
5.4	4.8-3.8	3.7 or less
5.5	4.9-3.9	3.8 or less
5.6	5.1-4.1	3.9 or less
5.7	5.2-4.2	4.1 or less
5.8	5.3-4.3	4.2 or less
5.9	5.4-4.4	4.3 or less
6.1	5.5-4.5	4.4 or less
6.2	5.6-4.6	4.5 or less
6.3	5.7-4.7	4.6 or less
6.4	5.8-4.8	4.7 or less
6.5	5.9-4.9	4.8 or less
6.6	6.1-5.1	4.9 or less
6.7	6.2-5.2	5.1 or less
6.8	6.3-5.3	5.2 or less
6.9	6.4-5.4	5.3 or less
7.1	6.5-5.5	5.4 or less
7.2	6.6-5.6	5.5 or less
7.3	6.7-5.7	5.6 or less
7.4	6.8-5.8	5.7 or less
7.5	6.9-5.9	5.8 or less
7.6	7.1-6.1	5.9 or less
7.7	7.2-6.2	6.1 or less
7.8	7.3-6.3	6.2 or less
7.9	7.4-6.4	6.3 or less
8.1	7.5-6.5	6.4 or less
8.2	7.6-6.6	6.5 or less
8.3	7.7-6.7	6.6 or less
	7.8-6.8	6.7 or less
	7.9-6.9	6.8 or less
	8.1-7.1	6.9 or less
8.7	8.2-7.2	7.1 or less
8.8	8.3-7.3	7.2 or less
8.9	8.4-7.4	7.3 or less

Office for Civil Rights List of Designated Schools (A)
ELEMENTARY SCHOOLS

The Elementary Schools which appear on this list were included in an in-depth investigative sample by the Office for Civil Rights. These schools do not need to complete the following items on the Compliance Information Report:

Page Number	Item Number
1	6
	7
	8
2	9d
3	12
	13
	14
	15
	16
	17
	18
4	19
	20
	21
6	33
	34
	35

Designated Sample Schools

District	Elementary Schools
9	2, 4, 28, 55, 90, 109
10	24, 32, 46, 79, 81, 85, 86, 115
18	115, 208, 219, 242, 268, 276
21	80, 97, 100, 128, 188, 209, 226, 288
26	115, 130, 173, 205
28	48, 80, 86, 117, 160, 174, 196, 220

EXHIBIT #5

AMENDED INSTRUCTIONS FOR COMPLETING THE OFFICE FOR CIVIL RIGHTS 1975
"INTERMEDIATE SCHOOL, MIDDLE SCHOOL, JUNIOR HIGH SCHOOL,
AND HIGH SCHOOL COMPLIANCE INFORMATION (B)" REPORT

IMPORTANT: Detailed instructions for completing the "Intermediate School, Middle School, Junior High School, and High School Compliance Information (B)" Report are furnished by the Office for Civil Rights (OCR) on the "INSTRUCTIONS" sheets that accompany the report form. Please refer to the OCR "INSTRUCTIONS" as your primary source of information. All questions must be answered as directed by OCR unless specific directions to the contrary appear in this set of instructions. The additional directions and emendations outlined below apply specifically to the New York City school system.

Item No. — Instruction

(NOTE: All Items, as well as All Columns within each item, are to be completed unless there are specific instructions below to the contrary. Example: Items 3, 4, 5 are to be completed although no reference is made to these items in the instructions below.)

1. ENTER: "New York City"

2. ENTER: Name of School; School Number or Code; District Number

6. ENTER: "10/31/75" as register date. (This date applies to data which will be furnished by the Board of Education. All pupil and staff data entered by the schools on the report form will be as of March 31, 1976.)

COLUMN I - XII: Leave Blank.

COLUMN XIII: Enter total of physically handicapped pupils in Special Education Classes and/or in Regular Classes. Count each pupil only once. Data on physically handicapped pupils in Regular Classes or grades may be obtained by teacher observation and pupil records only.

NOTE: In succeeding items, in which data on physically handicapped pupils are requested by grade, do not include pupils in Special Education Classes.

COLUMNS XIV - XVI: Enter data. Information regarding "Language Dominance" may be obtained from Pupil Record Cards, Language Assessment Battery (Lab) Tests; Rating Scale of Pupils' Ability to Speak English; Classroom Teachers' judgement. This applies to the "Language Dominance" columns in all succeeding items.

7. ENTER: Grade information in box provided on report form. If "U" is entered, indicate in blank space on line 7 the official designation of the classroom being reported.

COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Complete.

8. ENTER: Grade information in box provided on report form. If "U" is entered, indicate in blank space on line 8 the official designation of the classroom being reported.

COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Complete.

9. If data entered is for an "SP" grade; indicate the grade and "SP" (ex. "7SP") in a blank space in the question 9 box. Columns I - XII: Leave Blank. Columns XIII - XVI: Complete.

If data entered is for a track other than "SP": Columns I - XVI : Complete a columns.

If pupils are not programmed or identifiable by "track" or "program": Enter "DNA".

(Continued on Reverse Side)

10. If data entered is for an "SP" grade; indicate the grade and "SP" (ex. "9SP") in the blank space in the question 10 box. Columns I - XII: Leave Blank. Columns XIII - XVI: Complete.

If data entered is for a track other than "SP": Columns I - XVI: complete all columns.

If pupils are not programmed or identifiable by "track" or "program": Enter "DNA".

11. COLUMNS I - XVI: Complete all columns. (If pupils are not programmed or identifiable by "track" or "program": Enter "DNA").

12. COLUMNS I - XVI: Complete all columns. (If pupils are not programmed or identifiable by "track" or "program": Enter "DNA").

13-19. COLUMNS I - XVI: Complete all columns.

20. WORK-STUDY PROGRAMS: Report in this item those pupils in classes officially designated as "co-op" (Grade Codes 205, 215, 225 on the Official Class Audit Report, October 31, 1975, Form C).

COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Enter Figures.

21. COLUMNS I - XVI: Complete all columns.

22. & 23. LEAVE BLANK.

24. & 25. HIGH SCHOOLS ONLY WILL LEAVE THESE ITEMS BLANK. INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS WILL FOLLOW INSTRUCTIONS DIRECTLY BELOW.

24.a. INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS ONLY.

COLUMNS I - XVI: Complete all columns. Refer to Tables B.1 and B.2, "Pupils Reading Below Grade Level", for assistance in identifying those pupils in the "Highest Grade Offered" who read 1 - 2 years below grade level. Table B.1 refers to Metropolitan Achievement Test (MAT) scores and New York City (Stanford) Test scores. Table B.2 refers to Science Research Associates (SRA) Test scores.

EXAMPLE: If the "highest grade offered" is 9th grade, data will be entered for all 9th grade pupils whose most recent reading scores indicates that they are reading 1 - 2 years below grade level.

25. INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS ONLY.

COLUMNS I - XVI: Complete all columns.

EXAMPLE: If "highest grade offered" is 8th grade, data will be entered in Columns I - XVI for 8th grade pupils whose most recent reading scores indicat that they are reading more than 2 years below grade level. Refer to Reading Tables B.1 and B.2 as described above.

26. COLUMNS I - XVI: Complete all columns.

27.a,b,c, d,e. COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Enter Figures. Report in Item 27 (a-e) only those pupi in Special Education Classes. Refer to Official Class Audit Reports, Octobe 31, 1975 (Form C) to identify those classes which are assigned a Special Education Program Code Number in grade box (15-17). Do not include code 720 (SpGuid). The instructions below will help in determining the proper line(s) of Item 27 (a, b, c, d, e) of the Civil Rights Report to be completed. Plea read through all categories before entering figures. Pupils are to be repor according to their primary handicap.

27.a. COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Report "CPMD" and "Double-Handicapped" classes designat as "Educable Mentally Retarded".

27.b. COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Report "CRMD" and "Double-Handicapped" classes designated as "Trainable Mentally Retarded".

27.c. COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Report classes designated as "A" or "B" centers, Transitional Classes, readiness classes, Teacher-moms.

Do not include on line 27.c. those pupils designated as "Neurologically Impaired - Emotionally Handicapped". They are to be entered on line 27.e.

27.d. COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Report pupils in classes designated as "Health Conservation", "Health Conservation 20".

27.e. COLUMNS I - XII: Leave Blank.

COLUMNS XIII - XVI: Report pupils in classes designated as "Neurologically Impaired - Emotionally Handicapped", "Pre-Placement", "Health Conservation 30'

28-32. LEAVE BLANK.

33. COLUMNS I - XVI: Complete all columns. Include both Certificate and Diploma graduates.

34-40. COLUMNS I - XVI: Complete all columns.

41. INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS: Complete all columns. Refer to the Board of Education's "Promotion Analysis", SD 1105-1205, June, 1975 for the "Total" figure.

HIGH SCHOOLS: Enter "DNA"

42. INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS: Complete all columns. (See instructions for Item 41 above).

HIGH SCHOOLS: Complete all columns. Report only 12th grade pupils who were originally programmed to graduate in June 1975, but who did not graduate. (Refer to "Report on Graduates", June 1975, for "Total" figure.)

52. Please note that expenditures from Federal funds should not be included in this item.

53. Count each physical education class only once. Include only those classes actually designated as "Physical Education". Do not count the number of times per week the class meets.

54. Enter total number of classes other than physical education. Include officia classes and subject classes. Count each class only once. Do not count the number of times per week the class meets.

63. Leave Blank.

REVIEW OF FORM: PLEASE CHECK THE FORM TO ENSURE THAT ALL ITEMS HAVE BEEN COMPLETED. THE ONLY BLANK SPACES WILL BE THOSE WHICH THESE INSTRUCTIONS SPECIFICALLY DESIGNATED A SPACES OR COLUMNS TO BE LEFT BLANK. ENTER "O" OR "DNA" WHEREVER APPROPRIATE.

SIGNATURE: The Principal will sign on the line provided on the last page of the report form. The coordinator (e.g. assistant principal, teacher-in-charge, school secretary) who prepared the report will furnish his (her) name and school title in the space directly below the Principal's signature.

SPECIAL CIRCULAR: Detailed instructions concerning the due dates for the completion of the OCR Compliance Information report and the procedures for returning the completed form are provided in special Circular No.____, 1975-1976, which accompanies these Amended Instructions.

QUESTIONS: If any questions concerning these instructions should arise, please contact t Project Coordinator whose name and address appear below.

Mrs. Diane May
Board of Education of the City of New York
110 Livingston Street, Room 711
Brooklyn, New York 11201 (Tel. 596-4068)

March 1975

CIVIL RIGHTS SURVEY DATA COLLECTION FORM (D)
INTERMEDIATE, JUNIOR HIGH, AND HIGH SCHOOL CLASSES

ITEM NO._____ DESCRIPTION_____

GRADE_____ CLASS_____ TEACHER_____

The ethnic and/or physical and/or language data to be entered on this form are required by the Office for Civil Rights in its 1975 Intermediate, Junior High, and High School Compliance Information Report.

The ethnic data are to be obtained by teacher observation only. Do not ask anyone his or her race or ancestry. Data on pupils' language dominance and physical condition may be obtained from test scores and/or other notations on pupil record cards. In the absence of such tests or records, the teacher's personal evaluation will serve as the criterion.

Complete all Columns (I -XVI) except in those cases in which Columns I - XII have been "lined out". Enter data for the pupils in the grade and class designated above who are included in the "Description" above. (Example Grade 9, Class 401, "Pupils reading more than 2 years below grade level.")

NUMBER OF PUPILS WITHIN EACH CATEGORY															
I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV	XVI
American Indian or Alaskan Native		Asian or Pacific Islander		Black not of Hispanic Origin		Hispanic		White not of Hispanic Origin		Total (sum of Columns I - X)		Physically Handicapped	Spanish Language Dominant	Asian Language Dominant	Other Non-English Language Dominant
M	F	M	F	M	F	M	F	M	F	M	F				

FOR READING RETARDATION QUESTIONS ONLY: Enter also the total number of pupils for whom reading achievement data is available: ☐

Please return this form to the office indicated below:

_____

PUPILS READING BELOW GRADE LEVEL-INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS

NEW YORK CITY (STANFORD) READING COMPREHENSION SCORES

OR

METROPOLITAN ACHIEVEMENT TEST (MAT) TOTAL READING SCORES

THIS TABLE WILL ASSIST SCHOOLS IN RESPONDING TO ITEMS 24 AND 25 OF THE OCR INTERMEDIATE, JUNIOR HIGH, AND SENIOR HIGH SCHOOL COMPLIANCE INFORMATION (B) REPORT.

HOW TO USE TABLE B.1

The column headed "Time of Testing" refers to the grade and month in which the pupil took the test. For the NYC Test (Stanford) and the MAT, the months are numbered as indicated on the chart directly below:

NYC AND MAT MONTH/NUMBER CHART

September = month 0	December = month 3	March = month 6
October = month 1	January = month 4	April = month 7
November = month 2	February = month 5	May = month 8
		June = month 9

EXAMPLE: A pupil took the MAT or the NYC Test in Grade 8 in April. The pupil's "Time of Testing" was 8.7. (The grade is 8; the month is 7.)

The two "Scores" columns will identify those pupils reading either "1 to 2 years below grade level" or "more than 2 years below grade level."

EXAMPLE: A pupil took the MAT in Grade 7 in June. (The "Time of Testing" was 7.9.) The pupil's total reading score was 6.1.

Find 7.9 in the "Time of Testing" column. Read along the 7.9 line to see if the score 6.1 is either within the "1 to 2 years below grade level" range or is "more than 2 years below grade level.

Since 6.1 falls within the 6.9-5.9 range, that pupil will be included in the group identified as reading "1 to 2 years below grade level".

EXAMPLE: A pupil took the NYC Test in Grade 8 in April. (The "Time of Testing" was 8.7.) The pupil's reading comprehension score was 6.6.

Find 8.7 in the "Time of Testing" column. Read along the 8.7 line to see if the score 6.6 is either within the "1 to 2 years below grade level" range or is " more than 2 years below grade level".

Since any score 6.6 or less is more than two years below the 8.7 grade level, the pupil with the 6.6 score will be included in the group identified as reading "more than 2 years below grade level".

TABLE B.1 - NYC/MAT SCORES

Time of Testing (Most Recent Test) Grade/Month	SCORES 1 To 2 Years Below Grade Level.*	SCORES More Than 2 Years Below Grade Level
3.7	2.7-1.7	1.6 or less
3.8	2.8-1.8	1.7 or less
3.9	2.9-1.9	1.8 or less
4.0	3.0-2.0	1.9 or less
4.1	3.1-2.1	2.0 or less
4.2	3.2-2.2	2.1 or less
4.3	3.3-2.3	2.2 or less
4.4	3.4-2.4	2.3 or less
4.5	3.5-2.5	2.4 or less
4.6	3.6-2.6	2.5 or less
4.7	3.7-2.7	2.6 or less
4.8	3.8-2.8	2.7 or less
4.9	3.9-2.9	2.8 or less
5.0	4.0-3.0	2.9 or less
5.1	4.1-3.1	3.0 or less
5.2	4.2-3.2	3.1 or less
5.3	4.3-3.3	3.2 or less
5.4	4.4-3.4	3.3 or less
5.5	4.5-3.5	3.4 or less
5.6	4.6-3.6	3.5 or less
5.7	4.7-3.7	3.6 or less
5.8	4.8-3.8	3.7 or less
5.9	4.9-3.9	3.8 or less
6.0	5.0-4.0	3.9 or less
6.1	5.1-4.1	4.0 or less
6.2	5.2-4.2	4.1 or
6.3	5.3-4.3	4.2 or
6.4	5.4-4.4	4.3 or less
6.5	5.5-4.5	4.4 or less
6.6	5.6-4.6	4.5 or less
6.8	5.8-4.8	4.7 or less
6.9	5.9-4.9	4.8 or less
7.0	6.0-5.0	4.9 or less
7.1	6.1-5.1	5.0 or less
7.2	6.2-5.2	5.1 or less
7.3	6.3-5.3	5.2 or less
7.4	6.4-5.4	5.3 or less
7.5	6.5-5.5	5.4 or less
7.6	6.6-5.6	5.5 or less
7.7	6.7-5.7	5.6 or less
7.8	6.8-5.8	5.7 or less
7.9	6.9-5.9	5.8 or less
8.0	7.0-6.0	5.9 or less
8.1	7.1-6.1	6.0 or less
8.2	7.2-6.2	6.1 or less
8.3	7.3-6.3	6.2 or less
8.4	7.4-6.4	6.3 or less
8.5	7.5-6.5	6.4 or less
8.6	7.6-6.6	6.5 or less
8.7	7.7-6.7	6.6 or less
8.8	7.8-6.8	6.7 or less
8.9	7.9-6.9	6.8 or less
9.0	8.0-7.0	6.9 or less
9.1	8.1-7.1	7.0 or less
9.2	8.2-7.2	7.1 or less
	8.3-7.3	7.2 or less
	8.4-7.4	7.3 or less
9.5	8.5-7.5	7.4 or less
9.6	8.6-7.6	7.5 or less
9.7	8.7-7.7	7.6 or less

PUPILS READING BELOW GRADE LEVEL-INTERMEDIATE SCHOOLS AND JUNIOR HIGH SCHOOLS

SCIENCE RESEARCH ASSOCIATES (SRA) TOTAL READING SCORES

THIS TABLE IS APPLICABLE ONLY IF NO NYC OR MAT TEST SCORE IS AVAILABLE

IS TABLE WILL ASSIST SCHOOLS IN RESPONDING TO ITEMS 24 AND 25 OF THE OCR INTERMEDIATE SCHOOL, NIOR HIGH SCHOOL, AND HIGH SCHOOL COMPLIANCE INFORMATION (B) REPORT.

HOW TO USE TABLE B.2

The column headed "Time of Testing" refers to the grade and month in which the pupil took the test. For the Science Research Associates (SRA) Test, the months are numbered as indicated on the chart directly below:

SRA MONTH/NUMBER CHART

Sept. 1 - Oct. 14 = month 1
Oct. 15 - Nov. 14 = month 2
Nov. 15 - Dec. 14 = month 3
Dec. 15 - Jan. 14 = month 4
Jan. 15 - Feb. 14 = month 5
Feb. 15 - Mar. 14 = month 6
Mar. 15 - Apr. 14 = month 7
Apr. 15 - May 14 = month 8
May 15 - June 30 = month 9

(Note that this differs from the NYC/MAT month designations as described in Table B.1.)

EXAMPLE: A pupil took the SRA Test in Grade 8 on October 15. The pupil's "Time of Testing" was 8.2. (The grade is 8; the month is 2.)

The two "Scores" columns will identify those pupils reading either "1 to 2 years below grade level" or "more than 2 years below grade level".

EXAMPLE: A pupil took the SRA Test in Grade 7 on November 20. (The "Time of Testing" was 7.3 The pupil's total reading score was 5.5.

Find 7.3 in the "Time of Testing" column. Read along the 7.3 line to see if the score 5.5 is either within the "1 to 2 years below grade level" range or "more than 2 years below grade level".

Since 5.5 falls within the 6.3-5.3 range, that pupil will be included in the group identified as reading "1 to 2 years below grade level".

TABLE B.2 - SRA SCORES

Time of Testing (Most Recent Test) Grade/Month	SCORES 1 To 2 Years Below Grade Level.*	SCORES More Than 2 Years Below Grade Level
3.7	2.7-1.7	1.6 or less
3.8	2.8-1.8	1.7 or less
3.9	2.9-1.9	1.8 or less
4.1	3.1-2.1	1.9 or less
4.2	3.2-2.2	2.1 or less
4.3	3.3-2.3	2.2 or less
4.4	3.4-2.4	2.3 or less
4.5	3.5-2.5	2.4 or less
4.6	3.6-2.6	2.5 or less
4.7	3.7-2.7	2.6 or less
4.8	3.8-2.8	2.7 or less
4.9	3.9-2.9	2.8 or less
5.1	4.1-3.1	2.9 or less
5.2	4.2-3.2	3.1 or less
5.3	4.3-3.3	3.2 or less
5.4	4.4-3.4	3.3 or less
5.5	4.5-3.5	3.4 or less
5.6	4.6-3.6	3.5 or less
5.7	4.7-3.7	3.6 or less
5.8	4.8-3.8	3.7 or less
5.9	4.9-3.9	3.8 or less
6.1	5.1-4.1	3.9 or less
6.2	5.2-4.2	4.1 or less
6.3	5.3-4.3	4.2 or less
6.4	5.4-4.4	4.3 or]
6.5	5.5-4.5	4.4 or]
6.6	5.6-4.6	4.5 or]
6.7	5.7-4.7	4.6 or less
6.8	5.8-4.8	4.7 or less
6.9	5.9-4.9	4.8 or less
7.1	6.1-5.1	4.9 or less
7.2	6.2-5.2	5.1 or less
7.3	6.3-5.3	5.2 or less
7.4	6.4-5.4	5.3 or less
7.5	6.5-5.5	5.4 or less
7.6	6.6-5.6	5.5 or less
7.7	6.7-5.7	5.6 or less
7.8	6.8-5.8	5.7 or less
7.9	6.9-5.9	5.8 or less
8.1	7.1-6.1	5.9 or less
8.2	7.2-6.2	6.1 or less
8.3	7.3-6.3	6.2 or less
8.4	7.4-6.4	6.3 or less
8.5	7.5-6.5	6.4 or less
8.6	7.6-6.6	6.5 or less
8.7	7.7-6.7	6.6 or less
8.8	7.8-6.8	6.7 or less
8.9	7.9-6.9	6.8 or less
9.1	8.1-7.1	6.9 or less
9.2	8.2-7.2	7.1 or less
9.3	8.3-7.3	7.2 or less
9.4	8.4-7.4	7.3 or less
	8.5-7.5	7.4 or less
	8.6-7.6	7.5 or less
	8.7-7.7	7.6 or less
9.8	8.8-7.8	7.7 or less
9.9	8.9-7.9	7.8 or less

*All ranges are inclusive of the highest and lowest scores.

(High School Information is on Reverse Side)

Office for Civil Rights List of Designated Schools (B)
INTERMEDIATE SCHOOLS, JUNIOR HIGH SCHOOLS

The Intermediate Schools and Junior High Schools which appear on this list were included in an in-depth investigative sample by the Office for Civil Rights. These schools do not need to complete the following items on the Compliance Information Report:

Page Number	Item Number
1	15
	16
2	24
	25
3	27
5	43
	46
	47
	51

Designated Sample Schools

District	Intermediate Schools	Junior High Schools
9	148	22, 82, 117, 145, 166
10	-	45, 79, 80, 115, 118, 141, 143
18	-	68, 211, 232, 252, 285
21	303	43, 96, 228, 281
26	74	67, 158, 172, 216
28	8, 72, 142	157, 190, 217

(Continued on Reverse Side)

Office for Civil Rights List of Designated Schools (B)
SENIOR HIGH SCHOOLS

The Senior High Schools which appear on this list were included in an in-depth investigative sample by the Office for Civil Rights. These schools do not need to complete the following items on the Compliance Information Report:

Page Number	Item Number
2	26
3	27
5	46
	47
	51

Designated Sample Schools

Borough	Academic	Vocational
Manhattan	Seward Park	Art & Design
	Stuyvesant	Fashion Industries
	Washington Irving	Manhattan Vocational
Bronx	Christopher Columbus	Grace H. Dodge
	DeWitt Clinton	Samuel Gompers
	Morris	
Brooklyn	Eastern District	----
	Fort Hamilton	
	John Jay	
	Prospect Heights	
	South Shore	
	Thomas Jefferson	
Queens	Bayside	Queens Vocational
	Newtown	
Richmond	Susan E. Wagner	----

EXHIBIT #6

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF EDUCATIONAL STATISTICS
110 LIVINGSTON STREET, BROOKLYN, NEW YORK 11201
TELEPHONE (212) 596-8080

RICHARD P. VIGILANTE
DIRECTOR

Education Branch
REGION ALEXANDER KATZ
ASSISTANT DIRECTOR

March 11, 1976

Mr. Joel W. Barkan, Director
Office for Civil Rights - Region II
One World Trade Center
Suite 1963
New York, N.Y. 10048

REGION II

Dear Mr. Barkan:

An orientation meeting for community superintendents on the Spring 1976 Office of Civil Rights and Equal Employment Opportunity Commission surveys will be held on Thursday, March 18, 1976 at 11 a.m. in the Professional Library (Room 210) at 110 Livingston Street. Alfredo Mathew and I will chair the meeting, which is intended to clarify any technical or legal questions the districts may have concerning these surveys.

In order to keep to our original deadline mentioned in your March 8, 1976 letter, the following schedule for the OCR and EEOC surveys will be presented to the superintendents:

Week of March 26, 1976	Survey forms in the schools
March 29 - April 9, 1976	Schools complete both surveys
April 12, 1976	Survey forms in district offices
April 12 - April 30, 1976	Districts review, edit and complete survey forms
May 3, 1976	Survey forms in OES
May 3 - May 12, 1976	OES review, edit and complete survey forms
May 17, 1976	Complete survey packages due in OCR and EEOC offices in Washington, D.C.

I am hopeful that the March 18, 1976 meeting will clear the way to our successful completion of these 1976 surveys.

Sincerely,

RICHARD P. VIGILANTE

cc: Irving Anker
Bernard Gifford
Alfredo Mathew

EXHIBIT #7

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

April 8, 1976

Irving Anker, Chancellor
Board of Education of the City
of New York
110 Livingston Street
Brooklyn, New York 11201

Dear Chancellor Anker:

I wish to express my appreciation to you and members of your staff, particularly Mr. Alfredo Mathew and Mr. Richard Vigilante, for the cooperation the Office for Civil Rights received at the meeting on April 1, 1976. We welcomed the opportunity to answer questions concerning the Special Compliance Reports and other aspects of the New York City Equal Educational Services Review.

We understand that the Council of Supervisors and Administrators has passed a resolution concerning the collection of certain information including racial, ethnic and sex data. In light of that I would like to reiterate our authority to require such data. Title VI of the Civil Rights Act of 1964 prohibits discrimination toward any person on the ground of race, color, or national origin in federally assisted programs or activities. Title IX of the Education Amendments of 1972 similarly prohibits discrimination on the basis of sex in federally assisted education programs.

Department Regulations 45 CFR 80.6(b) and (c) require that recipients of Federal financial assistance provide the Office for Civil Rights with all information necessary to determine compliance with Title VI and the Regulations promulgated thereunder. Simularly, the Title IX Regulations incorporate the procedural provisions of Title VI. The applicable part of the Regulation is as follows:

> 80.6 Compliance Information
>
> (b) Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have

available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) Access to Sources of Information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

The information we are seeking in New York is being sought pursuant to 45 CFR 80.6.

It is my determination that the information required in Forms A and B of the Special Compliance Report is essential to the New York City Equal Educational Services Review, and, if necessary, we are prepared to exercise our legal options to obtain the information.

Members of my staff have worked with Mr. Richard Vigilante and members of his staff in an effort to minimize the amount of data which must be supplied by the individual schools. As a result, a large amount of the information on the Special Compliance Reports can be provided centrally by the Office of Educational Statistics.

We are aware that those schools included in our in-depth investigative sample have had additional burdens placed upon them as a result of the Review. In light of this, we have agreed that they may be relieved from the responsibility of completing several items. A description of the specific items and the schools to which the exemption applies have been included in the amended instructions prepared by the Office of Educational Statistics.

My understanding of the schedule for the distribution and return of the Special Compliance Reports is as follows:

1. The forms are to be in the schools by April 14, 1976.
2. The completed forms are to be returned to the CSD offices by May 7, 1976.
3. The completed forms are to be at OES by May 14, 1976.

Further editing and follow-up will take place following receipt of the completed forms by OES. The edited forms along with the information which is being supplied centrally on tape will be turned over to OCR prior to the close of school in June. Because of the necessity that all data reflect the 1975-76 school year, it is essential that this schedule be followed closely. I will assume that it is being followed unless I am notified to the contrary. If any of the above deadlines cannot be met by all schools, please notify me in writing as to the number of schools in each district which are not complying and the reasons for their noncompliance.

I believe that I should also comment on the need for the EEO-5 information. Although it was unfortunate that EEOC staff members could not be present at the meeting last Thursday, it is imperative that the EEOC forms be filled out in a timely manner. The forms are administered by EEOC pursuant to Office of Management and Budget guidelines designed to minimize burdens. Contrary to some suggestions voiced by New York personnel at the meeting, these forms are required by this Department under 45 CFR 80.6. The failure to timely complete and submit these forms would constitute a violation of the provisions of the Regulation.

I appreciate the assistance provided by you and your staff and by the Community School Boards in what is surely a major undertaking.

Again, let me thank you for your cooperation.

Sincerely yours,

Martin R. Gerry
Acting Director
Office for Civil Rights

EXHIBIT #8

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
HEW/OS/OFFICE FOR CIVIL RIGHTS WASHINGTON, D.C.	ACTION: INFO.	
ACCOUNTING CLASSIFICATION 7560135 6-1990751	DATE PREPARED 4/30/76	TYPE OF MESSAGE [X] SINGLE [ ] BOOK [ ] MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME MARTIN H. GERRY	PHONE NUMBER 245-6403	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

WASHINGTON, D.C.
APRIL 30, 1976

IRVING ANKER, CHANCELLOR
BOARD OF EDUCATION OF THE
CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, NEW YORK 11201

IN A LETTER TO YOU DATED APRIL 8, 1976, I REQUESTED THAT YOU PROVIDE THE OFFICE FOR CIVIL RIGHTS WITH THE DATA REQUESTED ON THE SPECIAL COMPLIANCE REPORTS. THAT LETTER OUTLINED OCR'S LEGAL AUTHORITY FOR THE COLLECTION OF THE DATA, AND REVIEWED THE TIMETABLE WHICH WAS MUTUALLY AGREED TO BY OUR OFFICES.

I UNDERSTAND THAT YOU HAVE RECEIVED A LETTER FROM THE OFFICE OF MANAGEMENT AND BUDGET STATING THAT THE SPECIAL COMPLIANCE REPORTS DO NOT NEED TO BE CLEARED WITH OMB UNDER THE FEDERAL REPORTS ACT.

IT IS MY UNDERSTANDING THAT NEITHER THE SPECIAL COMPLIANCE REPORTS NOR THE EEO-5 FORMS HAVE BEEN DISTRIBUTED TO THE SCHOOLS FOR COMPLETION. ACCORDING TO THE SCHEDULE WHICH WE AGREED ON, THE

SECURITY CLASSIFICATION		
PAGE NO.	NO. OF PGS.	
1	2	

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-35.306

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

CHANCELLOR ANKER - PAGE 2

FORMS WERE TO HAVE BEEN IN THE SCHOOLS BY APRIL 14, 1976, AND COMPLETED AND RETURNED TO THE COMMUNITY SCHOOL DISTRICT OFFICES BY MAY 7, 1976.

IT IS IMPERATIVE THAT THE SPECIAL COMPLIANCE REPORTS AND THE EEO-5 FORMS BE COMPLETED QUICKLY AND ACCURATELY BY EACH SCHOOL WITH DATA FOR THIS 1975-76 SCHOOL YEAR. THEREFORE, I REQUEST THAT THE FORMS BE IN THE SCHOOLS NO LATER THAN WEDNESDAY, MAY 5, 1976, AND THAT YOU GIVE ME AN ASSURANCE THAT THE FORMS WILL BE COMPLETED BY EACH SCHOOL BY MAY 19, 1976. IF THE FORMS ARE NOT IN THE SCHOOLS BY MAY 5, 1976, I WILL HAVE NO OTHER ALTERNATIVE THAN TO TAKE APPROPRIATE LEGAL ACTION TO SECURE COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, AND DEPARTMENT REGULATION 45 CFR 80.6.

Martin Gerry

MARTIN H. GERRY
DIRECTOR
OFFICE FOR CIVIL RIGHTS

SECURITY CLASSIFICATION	PAGE NO.	NO. OF PGS.
	2	2

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-35.306

EXHIBIT #9

EXHIBIT #10

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

BERNARD R. GIFFORD
DEPUTY CHANCELLOR

May 3, 1976

Mr. Martin H. Gerry, Director
Office for Civil Rights
Department of Health, Education, and Welfare
330 Independence Avenue, S.W.
Washington, DC 20201

Dear Mr. Gerry:

On April 8, 1976, I wrote a letter to Mr. Joseph W. Duncan, Deputy Associate Director of the U.S. Office of Management and Budget, asking if Forms A and B of the OCR Special Compliance Report for the 1975-1976 school year had received OMB approval. In his letter of response (see copy attached), Mr. Duncan said he was informed by OCR that the 1975-1976 Special Compliance Reports were developed to collect data "in response to a number of specific complaints about alleged violations of law" in the New York City Public Schools. According to Mr. Duncan, data collection activities conducted as part of a specific investigation of specific complaints are not subject to clearance by OMB.

This is the first indication I have had that these Special Compliance Reports are a result of "specific complaints" and are not simply part of a systemwide compliance review. In the numerous discussions between OCR and Board of Education staff members, Forms A and B have not been referred to as anything but a general compliance review. Even at the special April 1, 1976 meeting with our community superintendents and school board representatives, OCR staff did not mention that Forms A and B were designed to collect data on alleged violations of the law.

As you know, we are currently undertaking a massive data collection effort in six community school districts as part of OCR's New York City Equal Educational Services Review. In addition, we have made significant changes in our own data collection procedures so that much of the information requested by Forms A and B can be provided from central data files. We have made these efforts despite the nonexistent resources available for these purposes. Before we can administer the Special Compliance Report at an estimated cost to the school system of $900,000, I request that you provide me with a written and detailed description of the nature of these "specific complaints," against the New York City Public Schools. My staff and I will then review the Special Compliance Report to insure that the data requested are limited to the information requirements of the specific investigation.

Please do not think that my request is an attempt to delay or impede OCR investigations in the New York City Public Schools. Nobody is more concerned than I about the delivery of equal educational services to all children. I

feel that this matter would have been resolved much earlier if your office had made the intent of this Special Compliance Report known to us at the beginning. Please be assured that, following your response to my request, we will inform you of our findings and will proceed to comply fully with the mandate of the OCR investigation.

Yours in progress,

Bernard R. Gifford

BRG/ms
cc: Irving Anker
Joseph Duncan
Alfredo Mathew
Anthony Polemeni
Richard Vigilante ✓

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

May 10, 1976

HAND DELIVERED

Dr. Bernard R. Gifford
Deputy Chancellor
Board of Education of the
City of New York
110 Livingston Street
Brooklyn, New York 11201

Dear Dr. Gifford:

I have received a copy of your letter of May 3, 1976, in which you indicate your refusal to administer the Special Compliance Reports until I provide you with a written and detailed description of the nature of the specific complaints which we are investigating.

In a letter dated July 18, 1972 from J. Stanley Pottinger, then Director of the Office for Civil Rights, to Dr. Harvey B. Scribner, then Chancellor of the New York City school system (copy attached), the Office for Civil Rights informed him that we had received a number of complaints alleging that minority students attending public school in New York City were being denied equal educational opportunity. It was these complaints which initially provided the impetus for the review of the New York City school system.

Since the time of our first letter to the school system, this Office has been assigned the responsibility to enforce Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973.

In the nearly four years since our initial letter to the school system, we have received a substantial number of both specific individual complaints and complaints alleging systemic violations of civil rights statutes. The complaints we have received are confidential information and as such cannot be specifically disclosed. However, they do cover all areas of our enforcement jurisdiction and include allegations of discrimination in the following areas: lack of comparability in the allocation of money, programs and services; employment discrimination and its attendant impact on students; provision of unequal educational services; racial segregation and zoning problems; supplanting of Federal funds; sex discrimination against both employees and students; and discrimination against the handicapped.

As you are aware, the Office of Management and Budget has determined that the Special Compliance Reports do not require clearance under the Federal Reports Act. This decision was reached after OMB had reviewed the Special Compliance Reports. This Office views the informed decision of the Office of Management and Budget as determinative of the issues you raise regarding Federal Reports Act clearance.

When our investigation has been completed, we will, of course, make you aware of our findings.

Sincerely,

Martin H. Gerry
Director
Office for Civil Rights

Attachment

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ELEMENTARY-SECONDARY STAFF INFORMATION (EEO-5)

Public school systems (Schools and Annexes)

FORM APPROVED BY GAO
B-180541 (R0046) EXPIRES 12-31-76

This is a joint requirement of the EEOC and Office for Civil Rights and the National Center for Education Statistics of the Department of Health, Education, and Welfare

NOTE: Instructions for filing are given in the enclosed booklet. Additional copies of this form may be obtained from your district superintendent. →

SEND COMPLETED COPIES OF THIS FORM TO YOUR DISTRICT SUPERINTENDENT FOR TRANSMITTAL TO WASHINGTON BY THE FILING DEADLINE

TYPE OF REPORT ☐ INDIVIDUAL SCHOOL ☐ ANNEX

PART I. IDENTIFICATION

A. TYPE OF AGENCY WHICH OPERATES THE REPORTING SCHOOL SYSTEM OR SCHOOL

☐ Local Public School System
☐ Special or Regional Agency
☐ State Education Agency
☐ Other (Specify) _____

B. SCHOOL SYSTEM IDENTIFICATION (SKIP IF SAME AS LABEL)

NAME				
STREET AND NO. OR POST OFFICE BOX	CITY/TOWN	COUNTY	STATE	ZIP

C. SCHOOL INFORMATION

1. IDENTIFICATION

NAME				
STREET AND NO. OR POST OFFICE BOX	CITY/TOWN	COUNTY	STATE	ZIP

2. GRADES OFFERED (PLACE AN "X" UNDER EACH GRADE OFFERED IN THIS SCHOOL)

Pre-K	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	Special Education	OCTOBER 1ST ENROLLMENT
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	

3. INFORMATION ABOUT PRINCIPAL (CHECK AS APPROPRIATE)

IS A PRINCIPAL ASSIGNED TO THIS SCHOOL? ☐ YES ☐ NO

IF YES ☐ FULL TIME ☐ PART TIME

IF FULL TIME, DOES THE PRINCIPAL HAVE A TEACHING ASSIGNMENT?
☐ YES ☐ NO

SEX
☐ MALE ☐ FEMALE

RACE/ETHNIC IDENTITY (CHECK ONE)
☐ WHITE (NOT OF HISPANIC ORIGIN) ☐ BLACK (NOT OF HISPANIC ORIGIN) ☐ HISPANIC
☐ ASIAN OR PACIFIC ISLANDER ☐ AMERICAN INDIAN OR ALASKAN NATIVE

A-69

PART II. STAFF STATISTICS AS OF _____ (DATE)

DO NOT INCLUDE ELECTED/APPOINTED OFFICIALS (SEE DEFINITION IN APPENDIX)

SCHOOL NAME _____ **SCHOOL ID #:** _____

ACTIVITY ASSIGNMENT CLASSIFICATION	OVERALL TOTALS (SUM OF COL. B THRU K)	STAFF TOTALS									
		MALE					FEMALE				
		WHITE, NOT OF HISPANIC ORIGIN	BLACK, NOT OF HISPANIC ORIGIN	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	WHITE, NOT OF HISPANIC ORIGIN	BLACK, NOT OF HISPANIC ORIGIN	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
	A	B	C	D	E	F	G	H	I	J	K
A. FULL TIME STAFF											
1 Officials, Administrators, Managers											
2 Principals											
3 Assistant Principals, Teaching											
4 Assistant Principals, Nonteaching											
5 Elementary Classroom Teachers											
6 Secondary Classroom Teachers											
7 Other Classroom Teachers											
8 Guidance											
9 Psychological											
10 Librarians/Audio visual Staff											
11 Consultants & Supervisors of Instruction											
12 Other Professional Staff											
13 Teacher Aides											
14 Technicians											
15 Clerical/Secretarial Staff											
16 Service Workers											
17 Skilled Crafts											
18 Laborers, Unskilled											
19 TOTAL (1-18)											
B. PART-TIME STAFF											
20 Professional Instructional											
21 All Other											
22 TOTAL (20-21)											
C. NEW HIRES (7/1/75 - 10/1/75)											
23 Officials, Administrators, Managers											
24 Principals/Asst Principals											
25 Classroom Teachers											
26 Other Professional Staff											
27 Nonprofessional Staff											
28 TOTAL (23-27)											

A-70

CERTIFICATION: I certify that the information given in this report is correct and true to the best of my knowledge and was prepared in accordance with accompanying instructions. Willfully false statements on this report are punishable by law, U.S. Code, Title 18, Section 1001.

Date	Phone (Include Area Code)	Typed Name/Title of Person Responsible for Report	Signature

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

- versus - : 76 C 861

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, etc., et al., :

Defendants. :

- x

United States Courthouse
Brooklyn, New York

May 21, 1976
10:30 A.M.

B e f o r e:

HONORABLE A. SIMON CHREIN
United States Magistrate

JOSE A. CENTENO
Acting Official Court Reporter

A P P E A R A N C E S :

HONORABLE DAVID G. TRAGER,
United States Attorney

By: RICHARD P. CARO, ESQ.
Assistant United States Attorney

CORPORATION COUNSEL OF THE CITY OF NEW YORK

By: MS. BERYL KUDER

* * *

THE COURT: Do you want to present first?

MR. CARO: We gave to your secretary a list of the Government's Exhibits 1 through 14, and 1 through 10 are the exhibits that were attached to Mr.Gerry's affidavit in this case. Exhibit 11 was an attachment to the last exhibit. We separately identified it so that in the course of the proceedings it could more easily be referred to with less confusion.

THE COURT: Please bear with me a minute.

Exhibit 1. Is that Exhibit 1 or 1-A?

MR. CARO: It is 1, and then it's 2-A and 2-B.

THE COURT: Those are the actual questionnaire forms?

MR. CARO: It's two variations of the Junior High and Intermediate School compliance special report. Those variations were not attached to Mr. Gerry's affidavit. So we put the two and marked the differences in the court exhibit.

THE COURT: These are the exhibits you are referring to; is that correct?

MR. CARO: Yes, we will have a separate package that will be marked up. The copies attached to Mr. Gerry's affidavit have not been marked up, but these

have been.

Defendant's Exhibits 12, 13 and 14 are items which were not attached to Mr. Gerry' s affidavit. Exhibit 14 is an affidavit with an attachment which was submitted in the 21 case.

THE COURT: And you have already marked them as exhibits?

MR. CARO: Yes, I think.

MS. KUDER: I don't want to put you to the burden, but it may be necessary.

MR. CARO: It is a public record already and Elliot Hoffman --

THE COURT: Somebody in the State Attorney General's office?

MR. CARO: Yes, Elliot Hoffman. He received the entire copy of it in a prior proceeding.

We will introduce one additional exhibit, the chart which we had hoped to project on a screen. We reproduced it, so we'll mark that as a final exhibit. Copies will be available so everyone can follow it as it is discussed. What I'd like to do at this point when that chart is being discussed is, if I could, Miss Thomson had wrapped up the chart, and what I'd like to do is have her as she explains it, and also have another witness who has had actual

experience in assisting school personnel in filling out these forms to be able to comment along with Miss Thomson on the reasonableness of the Government's estimate of time.

THE COURT: Why don't you put the witness you are going to call, and the reasonableness on separately, and then she can comment on the exhibit.

MR. CARO: I thought if we established, just stopped Miss Thomson's testimony.

THE COURT: In other words, to make it more comprehensible, you would think it better to interrupt Miss Thomson's testimony and then come back to her again? You can present it in whatever manner you want.

MR. CARO: Essentially what I'm trying to get is, when we give our presentation of our estimate of time involved, teacher time involved in answering particular questions, I'd like Miss Nilda Koenig to be available to also comment simultaneously about the reasonableness of the time estimate.

THE COURT: Couldn't she do it in separate testimony, because it's a record that will have to be reviewed?

MR. CARO: We just might be going over the same ground again.

THE COURT: You think it might take a little longer?

MR. CARO: Yes, and I think it would be of greater clarity if we did it simultaneously.

THE COURT: Well, let's try to do it simultaneously. If I find it's going to make cloudy record I might ask you to present the witnesses one at a time.

MR. CARO: Our first witness is Carol Campbell.

C A R O L C A M P B E L L, having been first duly sworn by the Court, was examined and testifiedas follows:

THE COURT: Give your name and address to the court reporter; give your business address.

THE WITNESS: Carol Campbell, Department of Health, Education and Welfare, Office of Civil Rights, 330 Independence Avenue, S.W., Washington, D. C.

EXAMINATION BY MR. CARO:

Q Miss Campbell, could you tell me what your position is with HEW?

A I'm an Equal Opportunity Specialist. I work for Martin Gerry, who is the director of the Office of Civil Rights.

Q And in that capacity are you familiar with the v arious methods of the Office of Civil Rights employs to

gather information to ascertain whether or not various school districts are complying with the requirements of the law?

A Yes, I am.

Q Could you briefly describe those methods?

A The office investigates complaints, and conducts compliance reviews. The office in the past has conducted an annual survey of public school districts every year from 1968 through 1974. The surveys have been designed to support OCR in compliance monitoring responsibilities.

School districts are chosen, or have been chosen, on a variety of bases, sometimes at random and sometimes basic compliance involvement, and so forth.

Q Does OCR also investigate spedfic complaintsj

A Yes, it does.

Q Could you identify Government's Exhibits 12 and 13, please?

A Yes, these are the OCR 101 and 102 survey forms for 1974. The 101 form is a system summary, school district summary and the 102 form is an individual campus report.

THE COURT: If you have an objection to the entry of any exhibit for the purpose of this hearing at the time of the objection you'll make the objection. I assume, hearing no objection, it is admissible for the purpose of the hearing. This obviously

is ministerial but if there is anything later to which you object --

MS. KUDER: Certainly there is no question of authenticity with respect to any of these exhibits. There may be questions of relevancy.

THE COURT: At this point I can't see one, but should you want to make one, make it at the time of the offer; okay?

MR. CARO: I think other than relevancy, questions of relevancy, there is no essential objection to the entry of any of these exhibits as evidence.

MS. KUDER: But except possibly for Exhibit 14, I don't know that there is one exhibit I might question the relevancy on.

BY MR. CARO:

Q Could you tell me the purpose of forms 101 and 102?

A Well, they are used for several purposes. They are used in processing ESAA, which is the Emergency School Aid Act Application; the Office of Civil Rights looks at civil rights issues in these applications.

They are also used by regional offices to familiarize themselves with a particular school district, or a particular school before conducting on-site investi-

gation. And they are also used to sort of red-flag for reviews for possible investigations.

Q Could you give an example of how 101 or 102 might red-flag a particular problem in a school district?

A Well, for example, there might be, if there is a question of special education, and if they find in the office, find that minority students are being grouped into special education classes, it might cause them to question why that is occurring. I mean, they wouldn't make a determination based on the form, but it would indicate a possible area they might want to look at.

Q And OCR considers this like an over-site survey?

A Yes, it's a national survey, it goes to many school districts.

Q Would you explain in a little bit more detail what is involved in this so-called compliance examination, or compliance investigation?

A How do you mean?

Q Other than this survey there is a provision that allows for an in-depth compliance examination of a school system; could you explain that that entails?

A May I read? For example, in New York we're conducting a compliance investigation. We have some

instruments that are being used in six community school districts in sample schools within those community school districts. We also have the special compliance reports which are the subject here.

Q Is the compliance examination a cursory examination, or is it more in the nature of a comprehensive systematic examination?

A Yes, it's of an investigatory nature, and it is quite comprehensive.

Q And what would lead to this type of comprehensive examination to take place?

A Well, receipt of complaints, analysis of preexisting information from various sources. In the case of New York we have information from the State, the BED, basic education data system, we have information from Mr. Vigilante's office, school employee files, we have information from federal sources, for example, Title 1, applications with Title 7 information.

Q Is it necessary that there be some indication of violations occurring for this comprehensive compliance examination to take place?

A Well, the office can conduct compliance reviews, just general compliance reviews.

Q Investigating complaints, are there various

ways in which the Office of Civil Rights does investigate complaints?

A Yes.

Q Could you explain those methods, just generally?

A Okay. The office can go out and investigate just a specific complaint if it is, for example, an individual complaining about a certain situation. Complaints can be incorporated into compliance reviews, as in the case of New York.

Q Is it also possible to investigate groups of complaints?

A Yes, sometimes we get kind of a class complaint, complaint that it is alleging that a certain situation or something is occurring to lots of people, a group of people.

Q Is a comprehensive compliance examination taking place in New York City, the New York City public school system?

A Yes.

Q When did it initiate?

A Well, I believe the initial letter was sent to the School District July 18, 1972.

Q What did the compliance examination consist of in the first academic year, if it was undertaken, and if you can identify that year?

A In the summer of 1973, I believe, or perhaps late spring, we started to identify data sources because we were interested in finding out what information had already been collected in order to avoid any duplication, and in order to decide what we needed in addition. So that started out in '73 and went through into the fall.

Actually, this is a continuing process, because new data sources come into existence.

Q Was anything done during the academic year of '72, '73, after the July letter?

A Yes. An issues outline was developed, and a lot of planning work went on, a lot of planning for the review, because we didn't go at it haphazardly.

Q And this was followed subsequently in the summer of '73, and thereafter for a period, with identifying sources of information?

A Yes.

Q And what were those sources of information?

A I indicated some of them, the State Education Department, the City School System itself. I believe we have some information from the Health Department, other federal information.

Q After that, what was the next phase of the in-depth compliance examination?

A Well, we continued to try to familiarize ourselves with the system. We went into some schools, looked at student records to find out how well-filled-out they were, whether they could possibly be a source of information in the future.

We did do some work in the high schools to try to get a broader understanding of the high schools prior to the selection of specific high schools we were investigating in depth.

Q From your initial collection of data from the State and the City, and other sources, did this lead OCR to believe the possibility that certain violations might exist for which they needed more information?

A They did, yes. We did analysis on the information we had gathered.

Q And did there come a point in time when OCR determined what additional information it would need to further investigate the allegations of complaints that had been referred to in the letter of July 18, 1972, and also the violations that were shown to exist from the preliminary collection of data?

A And there were subsequent complaints, too.

THE COURT: Was there a continuing source of complaints?

THE WITNESS: Yes.

THE COURT: The first one you were aware of was in the summer of '72?

THE WITNESS: '72. That was when the review itself wasannounced.

THE COURT: Was the review precipitated by complaints?

MR. CARO: Miss Thomson was in the decision-making process, and she'll be able to testify to that.

Q In gathering this additional information in the academic year 1974 and 1975, what was done?

THE COURT: This is '75, '76, so last year would be in '74-75.

A Well, we selected the high schools and the districts, and the schools within the districts, to look at in depth. And that's the process that's been going on during this academic year '75-'76.

Q W hen you said this is a process that's going on in this year, could you tell me what schools are being examined this year? Generally are they just high schools?

A No, there are schools at all levels. There are 21 high schools and there are sample elementary and junior high, intermediate schools, in the six community school districts.

The list of schools is attached to the amended instructions of one of the exhibits.

Q And during this period was information on a city-wide school-system basis also being ob tained?

A Yes, as soon as the information becomes available. Well, the bulk data as we referred to it, the things I mentioned from the State and from Mr. Vigilante's office, and other sources, we try to get that as soon as it is available. And we also, the special compliance report is for this academic year also.

Q Would you identify documents attached to Government's Exhibit 14?

A I believe this is the affidavit that Martin Gerry submitted in the District 21 case. These are copies of data collection instruments which are being used in the sample schools in the six districts. Some of them are for elementary schools, and some for junior high schools. I don't believe we have any high school information. They weren't a part, it was just District 21.

Q These documents represent the investigatory forms or questionnaires, reports, surveys, that you requested of specific schools, elementary and junior high schools, and intermediate schools, to fill out?

MS. KUDER: Excuse me, your Honor, I would just like to assert my right at some later time to object to these documents on the ground of relevancy.

THE COURT: It is being admitted subject to connection, or relevant connection.

Q Could you describe briefly the specificity, or the comprehensiveness, of this phase of the investigation?

A Well, these are quite detailed. They are basically two different kinds, interviews, and sort of self-administered. Most of them are self-administered. They go into great detail about what is actually happening in individual classroom settings.

Q Could you tell me what the purpose or objective is in gaining this information?

A Well, it is used in connection with the other information we have to determine the compliance status.

Q When you say compliance status, do you mean to determine whether the specific possible violations of law that you've identified, whether or not those violations exist in those particular schools?

A Yes.

Q And those dealt with respect to complaints and the information gained from the other data; is that correct?

A Yes.

MR. CARO: We now submit and would like to place these in evidence.

THE COURT: Will you show them to your opponent?

Have you seen these?

MS. KUDER: I have not. If I see them, I will still have the right at a later time to question the relevancy. I don't really need to look at it.

#2

THE COURT: Yes.

MS. KUDER: I don't question the authenticity.

MR. CARO: They are offered into evidence to show (1) the nature of compliance examinations.

THE COURT: Are those sample forms, or are they forms that have already been completed?

MR. CARO: Those are uncompleted sample forms.

This is just to establish the investigatory nature of a compliance examination and what goes into a compliance examination.

BY MR. CARO:

Q When OCR intended to do the on-site compliance examination of schools in various local community school districts, to whom did OCR present its demands?

A I believe to the Central Board.

Q And the communications were with the Central Board?

A Yes, there have been communications with individual districts as well.

Q But the demands?

A I'm probably not the best person to address that.

THE COURT: Are you in a position to tell me when the demands were made, the first demands made on the Central Board? In other words, is the witness in a position --

MR. CARO: I think I'll ask it from Miss Thomson.

Q Are you familiar with the special compliance reports?

A Yes, I am.

Q Could you identify Government's Exhibit 1, 2A and 2B, please?

A Yes. One is a copy of the Elementary School Compliance Report. And we've gone through and indicated the items which individual schools are not required to complete, because the information is already available centrally.

Q And could you just show the Court how the

information which is not to be supplied by local schools has been indicated?

A Okay. The items in blue are those which will be supplied centrally, obtained through Mr. Vigilante's office.

T he items in green are those which we have exempted schools, exempted the individual schools included in the in-depth sample from completion, because this information is being gathered on site, and we didn't want to duplicate.

THE COURT: I take it the blank areas are the areas you intend to be answered?

THE WITNESS: Yes, and this has been done for each page of the report.

THE COURT: As far as to your knowledge, have these exemptions been made known to the City?

THE WITNESS: Yes. In fact, Mr. Vigilante's office made up a set of amended instructions which specifically tell schools which schools are included in the sample, and also the items that all schools do not have to complete.

THE COURT: I take it there are sample schools from which a more in-depth survey would be conducted, and from other schools a more minimal complaince would

be expected?

THE WITNESS: Well, the sample schools are the ones in the six districts that I talked about before. And they are the ones that do not have to complete the items in green.

They also don't have to complete the items in blue, because that has been collected for all schools in the city.

THE COURT: Schools outside of the sample district, what reporting requirements would you expect from them?

THE WITNESS: They would have to fill in all items that are not in any color, in other words, the ones that are blank.

There are also some items that are done in red, and those are items that after talking with Mr. Vigilante and the people on his staff we agreed to the deletion for all schools; primarily because of the lateness in the school year, these items were thought to be difficult for the school to complete.

THE COURT: Now, just so that I fully understand, there are sample schools from which a more detailed report is expected?

THE WITNESS: Yes, that whole pile.

THE COURT: And the schools not part of the sample selection, what reports do you expect from them? Just that?

THE WITNESS: Yes.

THE COURT: In other words, Exhibit 7, I believe?

THE WITNESS: This is one, Exhibit 1, and Exhibits 2-A and 2-B are expected from all schools; whereas Exhibit --

MR. CARO: Exhibit 1 will go to elementary schools?

THE COURT: Exhibit 2-A will be going to Junior High and intermediate schools, and 2-B to the High School? 14 would be going to just the samples?

MR. CARO: Just the samples.

THE COURT: Are there actual deletions of questions in Exhibit 14, or is that?

THE WITNESS: No, those are all of these questions which are to be completed by schools in the sample.

THE COURT: Completely without deletions?

THE WITNESS: As far as I know.

BY MR. CARO:

Q Was certain information which was originally

to be sought from the sample schools in the districts eventually decided to be omitted?

A I'm sorry.

Q Did OCR at one point cut back on the inquiries they were going to make in the sample schools?

A Again, I'm not as familiar with the sample schools.

THE COURT: Am I correct, I'll ask this of counsel: Am I correct in understanding that the sample schools are the schools that you are focusing on more in relation to specific complaints, or is that just a statistical sample?

MR. CARO: Your Honor, I think that in some instances that might be the case. I know in the District 21 case the Government represented that they did not have complaints about District 21. However, that did not mean that they did not have other reasons to believe that possible violations --

THE COURT: Violations existed?

MR. CARO: Right.

There was a rationale which was explained to the Court in the District 21 case on the criteria used to select the six districts.

THE COURT: It was not necessarily based on

violations within that district, or within the six schools, six districts, rather?

MR. CARO: It was my personal feeling that based on a number of criteria and data examined, they thought these were the six districts that should have been examined in depth, because violations of law might possibly very well exist there.

THE COURT: Okay.

MR. CARO: Again, that was my impression, that the evidence in testimony in District 21 case did not go that far.

BY MR. CARO:

Q Could you identify Government's Exhibits 4 and 5?

A Yes. These are the amended instructions to the Form A and Form B that were prepared by Mr. Vigilante's office. And they indicate the items which are not to be filled out by all schools, and the items which are not to be filled out by the sample schools.

Q Could you describe generally the type of information sought in the special compliance reports?

A Well, it's fairly in-depth information to investigate specific things that we're interested in looking at. Some items are school level, it's a school level

form, but some items call for information on a specific grade. Some items are on the school as a whole.

Q And compared with prior surveys that were given out city-wide, could you compare the specificity, or particularity, of the information?

A Yes. I think it's the most detailed and comprehensive survey that's ever been done.

Q Compared to the on-site compliance materials attached to Government's Exhibit 14, could you compare the specificity and particularity, of the special compliance reports?

A It's not as specific as those. It doesn't go to the level of detail that those do.

Q Will the information gained from the special compliance reports be collated with other information?

A Yes, it will.

Q To assess, for example, the data gotten from the on-site compliance examination, will it be necessary to compare, collate the information gathered from both together to evaluate each?

A Yes, in the case of the schools included in the in-depth sample they are specifically told not to complete certain items. So those items will have to be integrated in our look at it.

Q To the items in which those sample schools do complete, will that information be used for assessing the condition of the sample schools?

A I'm sorry.

Q T he items on the special compliance report which the sample schools will complete, will that information be used to help evaluate the on-site compliance examinations that are going on in those particular schools?

A Yes.

Q When were the special compliance reports first presented to the Central Board?

A A draft was presented in February of 1975.

Q And were those drafts then distributed?

A Well, we had several meetings with the Office of Educational Statistics to work on improving of the draft. I don't believe they were distributed at that time outside. Well, we had spoken with Dr. Colemene (phonetic) about them, but I don't believe they went out.

Q So in February of '75 and afterwards, you worked with the city officials to revise, modify the special compliance reports?

A Yes.

Q At that time did the city officials know that the special compliance reports would be distributed for

completion during this academic year?

A When we first started we had hoped to get them completed the last academic year. But it became apparent in our initial meetings with the Office of Educational Statistics that the quality of the data would probably not be adequate because it was so late in the school year when we first approached them. So we decided, you know, based on that to hold it until this academic year.

Q And city officials were aware then that the special compliance reports would be distributed during this academic year?

THE COURT: Could you give me the basis of your conclusion that the city officials were aware in 1975 that the special compliance reports were to be distributed?

THE WITNESS: There was a letter sent from Martin Gerry, I believe, it is one of the exhibits -- I think it was a March 13th letter, maybe.

Q Would you identify Government's Exhibit 3?

A This is the letter from Martin Gerry to Chancellor Anker.

Q When was the final version of the special compliance report given to the city officials?

A The final printed version?

Q Yes.

A February 11th of this year. That was just a few copies. They received the whole shipment, it was picked up February 24th in Washington.

Q But they had the final printed version on February 11, 1976?

A Yes.

Q Did there come a time when a schedule for the distribution and completion was agreed upon?

A We discussed a schedule at that February 11th meeting, and then Mr. Vigilante wrote us up a schedule and included it in a letter to Joe Barkun, Regional Director, in New YOrk.

Q Will you identify Government's Exhibit 6?

A THis is the March 11th letter from Mr. Vigilante to Joe Barkun, in which the schedule was outlined.

Q After agreement on that schedule were any meetings held?

A Well, yes, at the February 11th meeting Mr. Vigilante indicated that he thought it would move the way for the forms if we could meet. First it was discussed that we meet with people centrally, and then a second meeting was contemplated with community superintendents. As it turned out, only one meeting was held. But we

indicated at that time our willingness to meet with the people he felt it was necessary for it to be filled out.

Q Did there come a point in time when a revised schedule had to be made?

A Yes. We had hoped to have meetings late in February, early in March. Things got delayed. There was a meeting scheduled, I believe, for March 18, which was cancelled the day before by the school officials.

And a second meeting was scheduled for April 1st, and we did attend that meeting. And that was with primarily community superintendents. A schedule was discussed at that April 1st meeting, and Martin Gerry wrote a letter dated April 8, in which he indicated his understanding of the schedule, and asked to be notified in writing if for any reason the City could not abide by that schedule.

Q Could you identify Government's Exhibit 7, please?

A This is the letter from Martin Gerry that I just described.

Q When did OCR first receive word from city officials that they were objecting to the completion of special compliance reports on the grounds that they were not given the complaints?

A T here was a letter. The first written notification was ina letter, I believe, dated May 3rd, from Deputy Chancellor Dr. Gifford. To my knowledge we st 11 haven't received a copy in Washington. T hat was sent to Washington. We got a copy from Mr. Vigilante, the Regional Office. We picked it up. We became aware over the telephone, and that was telecopied down to us. That was either Wednesday or Thursday of that week.

Q Could you identify Government's Exhibit 9?

A This is the letter to Martin Gerry from Dr. Gifford.

Q Prior to May 3rd was to your knowledge any communication made between any city officials, or to any member of OCR, to advise OCR that they would raise this objection?

A We knew they hadn't gone out. We knew the forms hadn't gone out. I don't believe that the OMB, the fact that they were raising an OMB objection was made to us prior to that letter.

The original timetable as to that Vigilante letter, Exhibit 6, indicated the survey forms were supposed to be in schools during the week of March 26, 1976. From reading the appeal in this case it appears the form did not reach the schools until May 7, is that correct?

MR. CARO: Yes, the distribution process was to begin on May 7th. That was an agreement that was reached after.

THE COURT: This is on an amended schedule?

MR. CARO: The revised schedule wasn't adhered to either, and the distribution process was begun upon agreement between counsel after initiation of the suit and Judge Weinstein's request that we try to work something out, and it was at that point, after we did meet.

THE COURT: When was this meeting with Judge Weinstein?

MR. CARO: The first day of the hearing, I believe, was --

THE COURT: A week ago Thursday?

MR. CARO: -- a week ago Thursday. It was at that meeting when they suggested they would pursue this, but they would clear it with the Board of Education to allow the process to begin, because they had come into court and said they represented, they had a schedule which they said was the most expedient schedule they could now adhere to.

THE COURT: Which would have placed the form in the schools by which date?

MR. CARO: Distribution by May 7th.

Q In the schools, when?

A I believe today or Monday they're due in the schools. They were to be mailed out Friday or Monday.

MR. CARO: The schedule is attahed to the affidavit of Bernard Gifford.

THE COURT: I should have that.

MR. CARO: As Exhibit 1, and it shows survey forms were to be in the schools by the week of May 17.

THE COURT: In other words, was this an agreed-upon revision?

MR. CARO: This was agreed upon by counsel after initiation of the suit.

THE COURT: Okay, go ahead.

MR. CARO: We've basically agreed to that schedule. It doesn't leave us very much time.

THE COURT: The suit was initiated when?

MR. CARO: It was filed May 10th.

THE COURT: And the suit was inpart based on the complete noncompliance by the Board with the scheduling period as you understood the schedule asking on May 10th, it was the March 11th schedule, is that correct? In other words, as of the time of

the suit, the schedule you understood to be in effect was the schedule in the March 11th letter?

THE WITNESS: I believe Martin Gerry's April 8th letter revised it.

You see, there were delays in having these meetings.

THE COURT: In other words, the revised schedule was to start the process and the Board of Education was to place the forms in the schools.

MR. CARO: By April 14th.

MS. KUDER: By April 14th. Under the revised schedule the forms were to go to the schools April 14th?

THE COURT: When did the Government discover that the forms were not in the schools on April 14th?

THE WITNESS: There have been several conversations, telephone conversations, and we knew they hadn't been sent out. And finally on April 30th we sent a mailgram to the Chancellor advising him that if they were not in the schools by May 5th that would have to take appropriate legal action.

BY MR. CARO:

Q Could you identify Government's Exhibit 8?

A This is a copy of the mailgram that was sent

on April 30th from Martin Gerry.

MR. CARO: One point of correction, your Honor. I think you said, asked if the forms were in the schools by May 7th. The distribution, the delivery ofthe City to deliver them began May 17th, seven days after the suit was filed, and after the first hearing.

The complaint also refers to EEO-5 forms which were also sent out late. There is no objection now to their completion and submission. The Government's only interest, again, is assuring they will be back and to allow the Government adequate time to do some followup work. And the complaint is addressed to that type of relief with respect to the EEO-5 forms.

BY MR. CARO:

Q Prior to the sending of the mailgram on April 30th were there any contacts between members of OCR and the city officials to find out if the forms were going out, and if not, why not?

A Yes, there were conversations before and after. There were conversations between the time of the April 30th mailgram and when we did file suit on May 10th. I had conversations with Mr. Vigilante, and Miss Koenig indicated

to me that she also had conversations.

Q And in any of your conversations were the City objections based on any failure to obtain OMB clearance -- was that raised?

A That was raised in the May 3rd letter from Dr. Gifford.

Q But not prior in your telephone conversations?

A No.

THE COURT: Had there been any conversation of OMB clearance at any time prior to the City first raising an objection?

THE WITNESS: My recollection is, but I'm not certain, I think it was raised at one meeting. I believe Mr. Vigilante asked the question, and we indicated that we didn't feel it was needed.

THE COURT: And what was Mr. Vigilante's response to the expression?

THE WITNESS: I don't believe -- I mean, it wasn't pursued beyond that. I'm not certain of the day, I believe it was the February 11th meeting.

THE COURT: On the February 11th meeting, was it indicated to Mr. Vigilante that this investigation, or this survey, was being conducted in response to certain specific complaints?

THE WITNESS: No, that was not discussed.

Q In meetings held with city officials this year on the special compliance reports did OCR ever tell the city officials what the purpose of the special compliance reports was?

A Well, this year, well,the February 11th meeting there had been a lot of telephone conversations, but no, we were kind of beyond that.

Q Would it have been your impression that based on the City's participation, in having the special compliance reports, and based on the knowledge of their own experts, that it would have been reasonable for them to be aware that the special compliance reports were geared to investigating the possible existence of special types of violations?

A I think so. I think it is self-evident in looking at the form, the level of detail, and the sort of questions asked. They are very directly related to areas of enforcement responsibility.

Q In your opinion would it have been advantageous for OCR to highlight and stress the fact that the special compliance reports were based on possible violations of law shown to exist in allegations of the complaints or from previously collected data?

A No, I don't think so. I think that the school

districts had been notified as to the purpose of the review that was being undertaken. Generally, well, sometimes if we speak too much --

MS. KUDER: Excuse me. I object to the question and ask it be read back.

(The pending question was read back by the reporter.)

MS. KUDER: My objection concerns the fact --

THE COURT: -- that it is calling for an opinion of this witness.

MS. KUDER: -- and that it was not responsive to the question.

A (Cont'g) I think I may have misunderstood the question.

The special compliance reports were present ed as part of our investigation.

THE COURT: But that doesn't quite answer the question. I think the question should be withdrawn.

MR. CARO: Okay.

Q Has OCR experienced any resistance to its investigation efforts this year?

A Yes, I believe it has.

Q Could you briefly describe some type of

resistance that OCR has encountered?

A Well, I believe that the six community school districts that were selected for the in-depth investigation wondered why --

THE COURT: You mean the six community districts wondered?

A (Cont'g) T hey had been concerned why they had been selected.

THE COURT: How did they express that concern?

THE WITNESS: I was not in the meeting. Miss Koenig would describe that in greater detail.

THE COURT: Perhaps we will just save that question for Miss Koenig.

MR. CARO: Okay.

Q If the special compliance reports are not completed during this academic year would it be possible for the Office of Civil Rights to complete the special compliance reports in September, and then collate it back with the information that they have gained this year?

A I don't believe it would be possible because the students would not be, not all of them will be there. You'll have people graduating, moving on to new schools. Some of the information, most of the information that is being gathered at the school level I don't believe is

retained. They will have to do it when the reports reach them , and if it's not done this school year it would have to be the next school year with a different group of students. And it would not be compatible with the information already gathered for the period.

THE COURT: Is there any reason why teachers could not? You say, you've told me in conference this morning that a lot of that information is subjective and could not be taken from files, that it would have to be taken by particular teachers. Is there any reason why particular teachers cannot use their own recollection as to the composition of the class subsequent to the school year?

THE WITNESS: It's not even the same teachers that may even be there, particularly if they have another series of layoffs. Many teachers may not be where they are currently, plus there are a lot of students. They may not recollect the composition.

THE COURT: Is there any reason why the information that has to be, that is essentially to be gathered by teachers couldn't be gathered, let's say on a half day at the very end of the school year so as not to disrupt school attendance at this point?

THE WITNESS: That wouldn't allow any time for followup. It has been OCR's experience in the past that there is a lot of followup necessary.

THE COURT: Is there any way of anticipating the necessary followup so that you can more or less be able to, shall we say, collate the information once without the requirement of a followup?

THE WITNESS: If everybody filled in everything perfectly, yes.

THE COURT: In other words, theoretically, if everything was filled out in accordance with instructions, there was no material deviation from instructions, the information would be gathered on a once-only basis, on a one-shot basis; is that a fair statement?

THE WITNESS: Yes, that's preferable.

THE COURT: And with that in mind would there be any way the Government could obtain the information it needs by having the information-gathering take place at a time of the school year that would be less disruptive?

What I have in mind is at the end of the school year when tests are over and school discipline is usually somewhat more lax; in other words, attendance

isn't as heavily required, and regents aren't being taken, and final exams are up? You understand my question?

THE WITNESS: I don't think it would be realistic to do that, because I think schools may have questions as they start to answer the questions; there wouldn't be any time for them to get clarification.

The Office of Educational Statistics has indicated in our several meetings that they were afraid of problems. In fact, they've asked us for some help in monitoring problems, you know, some people to be there to answer questions. I mean, they anticipated that there would be several questions.

THE COURT: I also take it that certain remedial action on the part of the Government will be suggested to the City based on the result of this survey; is that correct? I mean, the ultimate aim is the need for certain remedial action, and that remedial action, of course, would have to be instituted in the calendar year 1976-77, because the school year would be over.

MR. CARO: I think there is a preliminary goal to when they can hope to be able to issue their

preliminary findings.

THE COURT: With their recommendations?

MR. CARO: With their recommendations, and then to go back with the city officials and to go over that and receive the objections, or additional information, and to assess that.

THE COURT: Well, the implementation of any collection essentially would take place when and if everything goes according to the most optimistic schedule the Government has in mind?

MR. CARO: Possibly late winter.

THE WITNESS: It depends if they object to our findings.

MR. CARO: It is my understanding, your Honor, that they would hope to be able to issue their preliminary findings in late November, early December.

THE COURT: That's of 1976?

MR. CARO: 1976.

THE COURT: Of course, the classes that are in existence now would have been broken up? The distribution of students would be different then?

MR. CARO: But if they found any types of violations other than something affecting one individual student who just graduated, if they found

any other pervasive systemic violations, and the City then suggested, we recognize this is wrong and we will begin taking remedial action right away, it could begin immediately.

To the extent that they agreed with the particular findings and lacked the opportunity to present evidence to prove that this is not the case, then , of course, remedial action would be delayed.

THE COURT: My understanding is that the Government has sought to produce by way of injunctive relief because time was of the essence in collating this material. One of the reasons it must be done and it must be done as soon as possible is that you want to have the information sufficiently in advance of the end of the school year so if any follow-up or correction is necessitated you'd be able to come back while the classes are still intact?

MR. CARO: Not this year. Followup this year, yes.

THE COURT: In other words, you want to keep the classes intact?

MR. CARO: I don't think my papers indicated an intention to take remedial action this currentyear, and if they left that impression I want to correct that.

THE COURT: There is always the possibility by operation of coincidence that the complaint that may or may not have been the cause of this survey might have been corrected by class reassignment or by any other means independent of the Government?

MR. CARO: I think Miss Thomson may be able to answer that.

THE COURT: But what I am addressing myself to now, the Government has to show in order to get an injunction that time is of the essence, to boil it down to its simplest terms. And if any remedial action will be taken next year it somewhat makes it somewhat more difficult for me to see how time is of such essence.

MR. CARO: Again, your Honor, it's the Government's position that if the special compliance reports are not completed this academic year, that an entire year of investigatory work would have to be undertaken again.

THE COURT: When I'm sure it is in some record now, but did the on-site investigatory work or the investigatory work apart from the questionnaires or the forms commence?

MR. CARO: In the fall of, the demand to do

the on-site compliance examinations were made in December of 1975. Negotiations and meetings were held in early fall of 1975. District 9, I believe, began in October of 1975. The remaining five districts resisted until January of 1976. Whereupon those five districts, four of the five districts, agreed to have on-site compliance examinations begin.

District 21 refused. Court action was initiated and the Court ordered, gave permanent injunctive relief, requiring District 21 to allow on-site compliance examination to go forward.

THE COURT: When was this?

MR. CARO: Hearings were held, I think, in late January or early February.

THE COURT: This year?

MR. CARO: And originally the Court issued its findings of conclusion and did not issue a formal injunction on the understanding that there would be voluntary compliance.

The Board voted thereafter twice not to comply. Whereupon, we moved for the institution of the injunction, and a formal written permanent injunction was issued.

THE COURT: In what month was this?

MR. CARO: March, early March.

THE COURT: In other words, you've never really obtained an effective on-site evaluation of District 21; is that a fair evaluation?

MR. CARO: I think not at this point, but the data-gathering phase of the on-site examinations will be completed this year. There may be some incidental followup work next year, but it would not involve information, I guess, about students, or information that would not be able to be preserved. Also, I believe, on-site compliance examinations of high schools were also going on during this year.

THE COURT: In other words, if the compliance with the questionnaire were postponed to next year you would have no way of relating it to the material you've already collated?

MR. CARO: Yes.

THE WITNESS: And there is a lot of other information we get on tape, computer tape, both from Mr. Vigilante's office and the State, and the lag time getting all of that ready. We still haven't gotten the profile tapes from '74, '75. We're waiting for the profile tapes from '74, '75, so, youknow, there is a substantial amount of time involved in getting

together the other information, in getting it in a form that would be usable.

BY MR. CARO:

Q What is anticipated in terms of OCR investigatory work next year as to the New York City public school system?

A I believe that they will receive the 101-102 forms along with many other school districts in the country. In terms of forms from OCR there may be some followup work done.

Q Basically, is it fair to say the comprehensive compliance examination that was instituted in 1972 would, therefore, be scheduled to be completed at the end of this academic year?

A For the most part, because we need a fair amount of time to analyze the data that we've gathered and to try to get our findings out by the end of this year. I mean, there is a tremendous amount of work and effort, and time involved.

MR. CARO: No further questions.

THE COURT: Do you have any questions?

MS. KUDER: Yes, I have cross-examination.

CROSS-EXAMINATION

BY MS. KUDER:

Q Miss Campbell, did I hear you state that it was necessary to administer the special compliance forms this year in order to have the data correlated with all the data that you checked in the six districts?

A Yes, in part, as well as the other information we have.

Q Other information on the complaints you are investigating?

A Other information from other sources, for example, there is information, the BED's information, and information from Mr. Vigilante's office.

Q It occurred to me with respect to this problem of correlating the special compliance forms, will they be administered in the six districts which are the districts where you accumulated all the data?

A They will be.

Q Will most of the forms be distributed to the other 26 districts?

A As well as the high schools, because we need the City, for the city as a whole.

Q In this investigation of specific complaints?

A As well, yes. As well as our analysis of

violations of law which were shown possibly to exist by that data.

MS. KUDER: All we're interested in is the possible violations that have been indicated by the data compiled. We're certainly not asking to review all the data accumulated.

MR. CARO: We won't pursue that then.

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A Yes. In the spring of 1973, up until that

time OCR had always done compliance reviews of small southern cities. And during the beginning of 1972, OCR received complaints alleging violations of Title 6 of the Civil Rights Act in New York City. And I was a part of several months of decision-making among the director and several special assistants. Based on these complaints a decision was made to initiate a compliance review of New York City.

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There have been approximately thirty person (years) ~~hours~~ from staff of the Region. There have been approximately four person years of processing time, and about $200,000 of data processing costs.

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Q Have you analyzed to the extent that the information sought in the special compliance reports that had to be obtained from the schools?

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Then the second half of the chart starting with Questions 20 and 21, these are school level information questions which the principal would be responsible to fill out.

So that what we're trying to indicate from this chart is that the burden on classroom teachers is really very small, because the data, no one teacher has to answer more than one question, and the actual question is only what the composition of the student in the class is.

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THE WITNESS: What I indicated was that I'm not concerned with the green here, because that's the sample schools. So this chart has to do with the blue and the red. What this means, that question

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MR. VIGILANTE: May I ask a question? On the elementary schools on the top sheet, Questions 24 and 25, where it asks for suspension data, how might the schools or districts provide this information concerning the ethnicity?

THE COURT: Could you repeat the question?

MR. VIGILANTE: We're talking about page four, Questions 24 and 25, which the Government indicates would be filled at the school level, information presumably to be filled out by some central person in the school. The question becomes how would a school provide this information since central files at the school or district levels do not indicate any information as to the ethnicity of the children involved,

or their language background, or their handicaps. And I would like to maintain that this information would only be gotten from a list by having the teacher indicate for each child and summarize the ethnic composition, physical handicaps, language background. The same is true on dropout questions. Again, because the questions are not being asked on the number of suspensions but suspensions by very specific pupil characteristics.

THE COURT: There would be no information at Central Board that would fill in the handicaps and the racial and language?

MR. VIGILANTE: Not on suspensions.

THE WITNESS: The Office of Civil Rights notified school districts that they just keep discipline data by race.

THE COURT: When was this notification given?

THE WITNESS: Last year, I think.

As far as the suspension data, school districts have been put on notice that they should keep this data. So I'm not competent to speak about how they would go about getting the data.

MR. VIGILANTE: The data that would be available are names. That is, you would be given a list

of names presumably by the teachers there of suspensions for the current year. They could make those judgments but it would consume time.

THE COURT: It would be something that would not be able to be done by Central files?

MR. CARO: That's on the assumption that the school disregarded instructions.

MR. VIGILANTE: I'm not going to become a lawyer here.

THE COURT: Rather than you engaging in argument --

MR. CARO: It's not argument. But Miss Thomson has indicated that instructions, I'm sure, were conveyed to the Central Board, and the Board was advised that from the schools this information would be required this year.

THE COURT: When was that advice given again?

THE WITNESS: Well, there was a memorandum that was sent to all the school districts in the country, and I can get you the date. I don't have it.

THE COURT: Was it before the period for which this information would be collated?

THE WITNESS: Yes.

MISS CAMPBELL: Could I just say something? Also there have been questions on suspensions which ask for race on 101, 102, forms that have been received in the past.

MR. VIGILANTE: Again, in all cases included the request by the Federal Government to maintain such files, we're not saying we couldn't do that. The procedure would be to get lists of names from the schools, distribute them to the various grade level teachers who could supply that information.

I remember the circular going out, but I think the only burden there was the school system must make this data available to the Government. We're saying we could make it available to you, but it would not be a simple matter.

THE COURT: What you are trying to say is the area that is on Government Exhibit 15 indicating that the teachers would not be imposed upon doesn't fully limit the area where the teachers would have to be called upon, and you are saying that had the Board of Education kept the records that you've mandated that they keep it, it would be done?

THE WITNESS: We're saying that the reason that we've prepared this chart was just to show

that we would like to give an estimate of how much time we think a teacher would have to spend if they were just indicating physical handicaps, and language, which is, it might take fifteen minutes just to go around and count up in class. And if they had to do race it might take fifteen minutes more. But it certainly wouldn't take half the day, and as far as we would like to argue, this information is reasonable and that it's not a burden since these schools don't have to do anything else other than fill out these special compliance reports.

THE COURT: This is the elementary schools?

THE WITNESS: Yes.

There is one thing that's more complicated on the junior high schools.

THE COURT: Let's stay with the elementary schools for a while.

Regardless of why, the fact still remains that the Board does not keep records on suspensions, and on its disciplinary acts, by race and physical handicaps?

MR. VIGILANTE: Not to my knowledge.

THE COURT: If in fact the issue here is not the issue of where it gets the information, that it

would be oppressive if the information is not in the Central Board; then we will take that into consideration.

MR. CARO: That the Central Board were to keep this information by this category in their own administrative files.

THE COURT: In their administrative offices. If the position the City is raising is the oppressive nature of this report, and part of their burden in completing the report is due to their failure to comply with instructions, okay, we'll take it into consideration. We have the situation as it presently exists regardless of who's at fault, and the question the Court still has to consider is whether the hardship would be imposed on the school children as well as the schools, or whether there would be a necessity for a suspension of school work for a half day in order to obtain this information, regardless of whether the underlying condition was caused through the Board's fault or not through the Board's fault. The question is whether there would be oppression.

THE WITNESS: We would like to assert that they would not have to take off a half day because

if a classroom teacher doesn't have any suspensions in her class she only has to indicate physical handicap and background.

THE COURT: Are you in a position to tell me what proportion of the classes have suspensions involved? In other words, would they be only an insignificant number of classes with suspensions, or would they be a very large number of classes with suspensions?

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MS. KUDER: The City is going to present a case as to the necessity for declaring a one-half clerical day. And we have Mr. Vigilante, and Miss May, and perhaps a principal, because Miss Thomson said she's not really familiar with how we're going to acquire the data. And we're going to tell you how we're going to have to acquire the data and what that means in terms of time.

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THE WITNESS: In a case where we know each classroom teacher is going to have to give this information here, all that information, the burden

doesn't fall on every single classroom teacher.

MS. KUDER: And I think part of the City's proof is going to be that a great deal of that will of necessity require work on the part of classroom teachers, because they are the only ones who will know it. And I believe you may be referring to some questions involving principals' estimates. It is my knowledge that principals don't like to sign forms where they involve estimates off the top of their head. And we'll be bringing in witnesses who will say that these forms will be back to the teachers; that if they've got to sign the form and they understand it is a very important form, they wouldn't want to sign that form unless the information is accurate, and they are going to go back to teachers.

THE WITNESS: There is another point that is significant. This has been going on for four years. There isn't a burden out of necessity to be imposed on the schools, because this is a comprehensive in-depth investigation, and this is the culmination of the investigation. So that these schools have not been required to provide any information out of the ordinary until this particular

form.

We took everything that the Board had obtained. We took all the things in red, we exempted the sample schools, and we're saying that we've made it reasonable.

THE COURT: Can I just ask something? It may be a fairly dumb question, but is there any reason why the survey could not be conducted if some of these racial and possibly physical circumstances would be apparent to a person even other than a teacher who would come in and look at the class?

Is there any reason why the Government itself, you said you were going to make ten people available, is there any reason why those ten people couldn't come in and make a visual survey?

MR. CARO: I guess if the City had requested that in February, there may have been enough time initially. We've been over this quite a few times with Martin Gerry, the director of the office, who was known to the Department officials as the official, the person whom the Secret
to make the decision as to what data will be collected, and he has determined that in his view this is reasonable. And he has talked to Chancellor

Anker about it. So this is the final decision that OCR reached about what information is required.

If you contrast this information with that pile of information over there that the sample schools are required to fill out, this is really a very small amount.

MS. KUDER: This in comparison with the in-depth six --

THE WITNESS: The six sample schools.

There is one part of the chart on the next page called "Junior High, Intermediate Schools," where it says in Question 24 to Question 25, and then on the next page on high schools there are two more questions. They were left out on this type chart, but the teacher has to determine reading scores related to race of the students in the class, and we would assert that that would take a great deal more time. So certain select teachers might have to do that. It's just in the junior highs. We limited it to 24 and 25. The teachers of students in the higher grades in the junior high schools we estimate would have to spend at least an hour and a half relating the reading scores to the race of students. But we should point out that

in the high schools we did eliminate those questions.

THE COURT: Reading levels should be on forms that are in the possession of the Board of Education, shouldn't they?

THE WITNESS: They are not related to race.

THE COURT: I'm not a statistician, but would a different approach possibly obviate a lot of difficulty classroom rosters could be made up indicating racial, ethnic background, language background, physical handicap, and then the material that's in the possession of the Central Board, or the principal's office, could be compared to the list made of students by racial and ethnic background with physical handicap, et cetera? This is a question I'm directing to the City. Could the City not make a list of students in a teacher's charge listing them by racial and ethnic background, which physical handicaps, and by the language background, and then that material be turned over either to the principal's office, or the Board of Education, where these other materials, where the other specific questions,might be available?

In other words, I'm not a statistician, but would that not save everybody a lot of aggravation

and do away with the need for extensive questioning and answering by the teachers?

MR. CARO: The only thing, I'll indicate that the Federal Government in this regard has just asked the Board to provide us information, and we've never indicated a preference for one mechanism over another.

THE COURT: But, in other words, the Government would have no objections to that?

MR. CARO: No.

THE WITNESS: We're only talking about one grade in the City that's required to do this particular question.

MR. VIGILANTE: It would not be possible, your Honor. In my current understanding of City's regulations to indicate any individual child's ethnicity, it has not been a practice of the school system ever. And in surveys conducted I've observed that it's information only gathered in sections, and I know simply for all matters by class, and general records, by grade in schools. There may be some problems in terms of City policy, Board policy, I mean. But I know the question has arisen in the past as to why New York City does not collect ethnic information by pupil.

THE COURT: But on the other hand, in any

application in any of these questions the City is not objecting on the grounds they want to obtain the anonymity of racial background of students?

MR. VIGILANTE: Only in aggregate, individually that a child not be identified by ethnic groups.

THE COURT: We don't want to say John Smith of this background.

MS. KUDER: Right.

MR. CARO: I'd just like to clarify how information by pupil will be stored by the Government.

THE WITNESS: We're not collecting any individual data on students here.

MR. VIGILANTE: I was just referring to your suggestion.

THE COURT: The principals could list all of the reading scores by name, and give it to the teacher. On the other hand, a teacher would have to make certain sugjective judgments on racial ethnic background.

What category is ethnic background?

MR. VIGILANTE: There are six categories that both we and the Federal Government used.

THE COURT: In other words, you feel these are fairly objective?

THE WITNESS: This part is already collected

anway. They've already done this in the blue.

MR. VIGILANTE: Again, by summary, it's been identified and collected by classroom summary form.

THE COURT: Is it contemplated that each teacher for each class will get a set of forms?

MR. VIGILANTE: We have been preparing work sheets similar to this form which would change a blank space to a space, so if the teacher wanted to fill out one item, let's say "dropouts" then it's one of the exhibits that they are referring to, special instructions that we provided with the circulars and it shows a sample blank form which the district chooses could duplicate and distribute to its classroom teachers.

The implication, perhaps, is that there would be one of those forms. In fact, there would be forms some teachers in certain grades would get more than others, because, again, virtually every question being asked called for the same kinds of data, ethnicity, background. So whether the question be comparing a classroom register, reading level, suspension, dropouts, the information would have to be obtained for each of those in break in class time. So if a particular teacher were being asked questions on both reading, retardation, dropouts, suspension, then a teacher would

have to fill that out during her free time. And generally the information would come in three different ways. Some of it would be provided from the child's record card. Then each teacher could mentally read the score, so and so.

THE COURT: But the teachers don't have to make an identification on a student by student basis no matter how you approach the problem?

MR. VIGILANTE: But it's not to be put down, and you may want to get somebodyto indicate the Board's policy on that. The judges have been very clear in terms of pegging the child.

THE COURT: For a brief moment the teacher is going to have to peg that child.

MR. VIGILANTE: Some may not.

THE COURT: Would there be any great difficulty in creating a temporary file which would be made not permanent and with adequate safeguards afterwards?

MR. VIGILANTE: I think we have.

THE COURT: In other words, the issue that we're addressing ourselves to now is whether there would be an enormous burden on the teacher, and on the Board of Education of New York City, and if there is a mechanism for solving that problem I take it the City would be

perfectly content to comply; is that a fair statement?

MS. KUDER: If we saw the end result.

THE COURT: In other words, your bottom line is that you are going to have to close the school, or you know, almost a million dollars in expenses, and if there was some way you could comply without doing violence to some other principal such as permanently characterizing somebody as being Hispanic, not of South Sea Island origin, you would be more than glad to comply if there were no unusual expense?

MS. KUDER: Unusual expense and unusual burden.

THE COURT: You are thinking in terms of closing the schools in terms at a very crucial time in the year?

MS. KUDER: Yes, that's my understanding.

MS. MAY: In other words, your suggestion is very well put, but what I see is a problem that wouldn't save the teacher very much trouble at all. She would simply be putting that information on one large sheet of paper and not even doing the final step instead of perhaps filling out three data collection forms? Honestly, I don't see any difference. And the individual teacher would still have to go to each child's reading record card, note the reading score, categorize the child according to ethnicity and language dominance.

She'd be the doing the same exact categorization and record referral work. The only difference would be that she wouldn't do the final step, that is, entering on the data collection form. She'd instead have a long list as a result of doing all that work.

THE COURT: What I have in mind would be for each teacher to make a temporary, and even we'll do it on rice paper for it to be eaten afterwards, a list of all the students in her charge as to category, class, at the top of the page.

The particular data wanted of the HEW is some place in the central school records or the records of the individual schools, is that correct? Would the referral of that list to the principal's office where some clerk in the school can apply it to these questionnaires and a list be supplied, would that not save the teacher time and permit the schools to function?

MS. MAY: The answer is no, because they would still have to do the same. In other words, if you have pupils John Smith through Alice Adams and for each one of those you have to provide, for example, for a third grade teacher, a reading score and ethnic characterization, language dominance, and yes or no on physical handicaps, in order to respond to one of those

items you would have done the same amount of work that would have been required if you had done it the way in which he had planned to collect this data. I understand exactly what you are suggesting, and I wasn't objecting on the confidential aspect, but the fact is it really doesn't cut out any of the teacher work. It's just a different way of organizing it, and plus it gives a tremendous burden to the central administrator and his assistant in any particular school. I understand exactly.

MR. CARO: Your Honor, I was wondering, for clarity purposes perhaps we would interrupt Miss Thomson's testimony, take some previous testimony of another witness?

THE COURT: And she's subject to recall, okay.

N I L D A K O E N I G , after having been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARO:

Q Please state your name?

A Nilda Koenig.

(Continued on next page)

Q Spell it?

A N-i-l-d-a K-o-e-n-i-g.

Q And what is your position?

A I'm Chief of Elementary and Secondary Division of the Office of Civil Rights of Region 2, and I'm also Project Director of the New York City Review.

Q And where is Region 2 located?

A The Office of Civil Rights at 26 Federal Plaza.

Q However, the New York City Elementary and Secondary Divison Project is number One World Trade Center, Room 1963. And how long have you been with the Office of Civil Rights?

A With the Office of Civil Rights for seven years, seven and a half years.

Q And during that period have you had occasion to assist school administrative personnel, and teachers, in answreing, or filling out questionnaires, or reports, or surveys?

A I have. I have also filled it out in a school district.

Q Are you familiar with the special compliance reports?

A Yes.

Q Have you had experience in assisting administra-

tion officials, or teachers in filling out reports which were more general and less specific than the special compliance reports?

A Yes.

Q And have you had similar experience in assisting administration officials, and teachers, in filling out reports which were more specific and demanded more information than the special compliance reports?

A Yes.

Q And could you describe the various accommodations that were made by various schools when these types of forms had to be filled out?

A All of them?

Q Just some examples, just what were the typical ways that they did it?

A For instance, in collecting suspension information in a high school there is a central file at the office of the principal in which I can look at all the files, taking names and the classes, and then go to the specific teacher to get the race and ethnicity. This did not take long, and it was a high school.

THE COURT: Can you tell me are you talking in your experience with a particular high school?

THE WITNESS: Yes, these are specific high schools.

THE COURT: Would you be in a position to tell me about how many suspensions the New York City school system would have in a typical year? In other words, would it be a significantly large number?

THE WITNESS: I wouldn't know exactly how many. I could get that information.

THE COURT: You've seen the records at particular high schools?

THE WITNESS: Yes.

THE COURT: And can you tell me how many suspensions there were, or the largest number of suspensions that you've ever seen within a particular year in a high school?

THE WITNESS: I really don't remember. Ihave it in the office.

THE COURT: Ten, fifteen, less?

THE WITNESS: It would be, I guess.

THE COURT: Significantly larger?

THE WITNESS: No, thirty maybe.

THE COURT: The reason I'm asking these questions is to see if this particular issue is anything of substance, or whether it's an isolated case.

Would you be in a position to comment on that during the presentation of your case? In other words,

Mr. Vigilante seems to have indicated some difficulties in getting the appropriate records in connection with suspensions, and I was wondering if there was a significant number of suspensions, or whether there would be just a few isolated cases. But I wouldn't impose an undue burden.

MISS KUDER: I think Mr. Vigilante used the suspensions just as an example.

THE COURT: Of one of many types of special problems?

In other words, you're telling me that while suspensions in and of themselves might not be significant cause for study or research, it's just one of several things that you've accumulated?

MR. VIGILANTE: Fifteen minutes here, a half hour there, that would add up to roughly three and a half hours.

Q In assisting teachers to fill out certain information forms could you tell just the various mechanisms schools have employed to allow teachers to fill out the forms?

A In terms of the schedules?

Q You can refer to anything that you'd like.

A In terms of schedules which are the questionnaires, specific questionnaires --

THE COURT: What exhibit number?

THE WITNESS: The one in the samples.

A (continuing) -- different districts have used different ways. The superintendants of different districts have used different ways. For instance, in one district the superintendant requested that we get the information after three o'clock, which we have done. The teachers filled it after three o'clock, and we got the information after three o'clock.

In other districts the superintendants have said that the teachers have to fill it out and have not given them any time, but we have given enough time, like, four weeks, in order to get it back.

In other districts they have asked or encouraged to use the prep periods to fill it out.

However, it's our experience, and we time them in the office, that although they look very big it took like twenty minutes, from twenty minutes to an hour and a half, depending on the teacher.

MISS KUDER: Excuse me, you are talking about the special review?

THE COURT: But the questions were substantially the same?

MR. CARO: They are more. Far more specific.

THE COURT: And you are saying that a typical teacher would be engaged in completing the questionnaire, you felt that her time would be twenty minutes per teacher?

THE WITNESS: From twenty minutes to an hour and a half.

THE COURT: In other words, no teacher took more than an hour and a half?

THE WITNESS: That is correct.

THE COURT: And what would be the typical teacher time?

THE WITNESS: The average?

THE COURT: Not the average, the one that occurred most often. In other words, the median.

THE WITNESS: I wouldn't know, because I would have to know everybody.

Q But from your own experience?

A I would say about 45 minutes, maybe, or something like that at the most.

THE COURT: Okay.

Q Do you know whether in those instances where teachers were asked to fill out forms after three o'clock whether or not any overtime pay was paid?

A No overtime was paid. And just the superinten-

dant made the decision that they should fill it after three o'clock.

THE COURT: Did you say twenty minutes to an hour and a half, the average being forty-five?

THE WITNESS: Forty-five.

MR. CARO: I think the Court will note the material here. They are described in Mr. Gerry's affidavit. Some are very detailed.

THE WITNESS: It is far more detailed.

MR. CARO: No further questions.

THE COURT: Do you want to cross examine?

MISS KUDER: Not at this point in time.

THE COURT: Are you reserving?

MISS KUDER: I would like to reserve my right.

THE COURT: In other words, you might like to cross examine on the area covered by this witness.

L U C Y T H O M S O N , having been previously sworn by the Court, was examined and testified further as follows:

DIRECT EXAMINATION BY

MR. CARO:

Q Miss Thomson, just one point of clarification on the special compliance reports in their information, how many questions concern or seek information other than demographic data?

A Well, we showed the questions one through eighteen concern demographic data on classes.

THE COURT: You are referring to the elementary school page?

THE WITNESS: Yes.

A (continuing) We pointed out that there are two sets of teachers that fill out information also on reading scores of the students. Then the rest of the information if you look carefully at the form you will see that there are two questions, 20 and 21, and 24 and 25; they have to do with demotions and suspensions, that data as Mr. Vigilante also pointed out concerns connecting this information with demographic data.

But then the next set of questions on the next page concerns simple questions for the principal to answer.

THE COURT: Which question numbers?

THE WITNESS: I'm on page 5.

THE COURT: 26 to 32.

THE WITNESS: That's how many hours certain kinds of classes are offered.

THE COURT: And that would not impose on teacher time?

THE WITNESS: That is right.

A (continuing) The next set of questions concern

the language proficiency of staff and parent approval of staff. It's the Office of Civil Rights view that the principal should already know this. So they should be able to get this from their records.

Then the next set of quesions concerns some budget questions which we discussed. they would be filled out in the district offices probably.

Then there are some questions on sex identifiable classes. That should be a pretty small number.

THE COURT: When you say sex identifiable classes, you are thinking of home economics?

THE WITNESS: or shop, yes.

A (Continuing) Then there is a series of questions where the principal estimates how many students, estimates of language.

THE COURT: How many children of other languages? But if you want an accurate record, and from what I've already heard from Mr. Vigilante the principal might not feel free to estimate because he might want to go closer to the scene, and that might involve an imposition on teacher time.

THE WITNESS: It's been our experience that these language groups exist in certain neighborhoods, and the principal knows he's in one of these neighbor-

hoods, and not all of these are going to show up in every school.

THE COURT: You are referring to questions 45 and 46.

THE WITNESS: So it's sort of common knowledge throughout the district, throughout the school system, where these children at least live. So it's not the principal that has to go and find out initially.

THE COURT: In other words, if no ethnic records are being kept by the central board or in the school offices, the only person who would have the competence to answer question 45 as to Asian language dominance groups, and then you have to make a distinction between Chinese, Korean and Japanese; would this not be only within the competence of the teacher in the classroom? In other words, a school may cater to a particular concentration of Koreans, but the principal would not be that knowledgable.

MR. CARO: I guess it's our position that since as a matter of common knowledge the principal will know if there is a large group of Korean speaking people in the neighborhood.

THE COURT: He may know the neighborhood composition, but he might not know the school's composition.

THE WITNESS: As I understand the Low decision, a principal is required to know who serves the students whose primary languages are these languages. So it's OCR's position the principal is supposed to know whether these children are in his school. The school district also did extensive testing of non-English-speaking children under the Aspira case. so I think there is a lot of information in the schools that would enable the principal to make a fairly accurate estimate of these very particular details of the language groups.

MR. CARO: You might occasionally run into a principal, a newly appointed principal, who is unfamiliar and who will have to get staff help.

THE WITNESS: But they should be aware of the existence of these langages.

A (Continuing) The final set of questions concerns the language fluency of staff, again, in question 50, which the principal should know, and this question is a principal-answered question. This question is being provided, question 55 is being provided by the central board, and question 53 is a subjective evaluation of facilities in the school. So we would like to assert that other than the questions that we've been over that concern the classroom teachers, the rest of the form is really quite reasonable.

THE COURT: In other words, the significant number of these questions were being asked only by the sample schools, not the area exempted out in green? This won't be answered with connection with this survey because they have been answered? I'm thinking in terms of Miss Koenig's statement of the time required. In other words the area patched out in green is the area put to the sample school districts, and essentially complied with, and you're not making the demand upon the City now to provide that information?

MISS KUDER: Did you say demand?

THE COURT: I was trying to fix something in my mind. If Miss Koenig's testimony is to be accepted that the most that it ever took a teacher to answer it was an hour and a half, and the median time involved was 45 minutes, I just wanted to have some idea of the proportion of the questionnaire that's going to be put to the teacher now so I can make some sort of ratification if that testimony is accepted. I was just interjecting and clarifying something out of turn.

A (continuing) To summarize the first set of questions 1 through 18 concern the classroom teacher, and then possibly questions 19 through 25 that could concern the classroom teachers.

THE COURT: This is in connection?

THE WITNESS: Elementary schools.

A (continuing) So that's our summary of the amount of contact that the classroom teachers would actually have of this form.

Q Miss Thomson, are you aware of any instances where there has been resistance to OCR collection of data?

A Yes. The instances that I know about are the Council of Supervisors passed a resolution saying they would not give OCR racial and ethnic data.

THE COURT: On supervisors or on students?

THE WITNESS: It's students and staff.

A (continuing) District 29, I think , recently passed a resolution saying they were going to refuse to provide racial and ethnic data.

District 21 refused to provide it, and we had to litigate in that case you know about.

So there has been widespread resistance in the city to the collection of this data.

Q Based on the experience OCR has had in New York, elsewhere, would it be reasonable to delay collection of the data from the teachers until the last day of the school year?

A I think that would be not practical at all, because for one thing there is over a thousand schools in New

York City, and to get every teacher to actually do it on the last day is unlikely.

We've also been told by Mr. Vigilante that over 50 schools in New York City have refused to fill out the basic educational system data that was requested several months ago, and we've also had these instances which I just described, resistance to providing of the data. so I think it would be unrealistic to assume if we picked out a date at the end of the year it would actually be provided.

THE COURT: You are basing that conclusion on the resistance you've already encountered?

THE WITNESS: Yes.

Q Could you state what the reasons in your view are which necessitate the special compliance reports to be completed this year?

A Yes. The special compliance reviews are really the link to the final investigation. The investigation started out based on complaints, and it's being narrowed as the investigation has progressed.

Most data was gathered for two years previous to this one. Then this year, as I described before, data was collected in six in-depth sample districts, and then the final data that we need is for all the rest of the schools in New York City. And if we don't get the data this year consistent

with the rest of the data that we collected in the six districts we'll have to do it again.

THE COURT: In other words, it would completely destroy the usefulness of an expensive body of research?

A (Cont'g) Also it's OCR's responsibility to come out with findings because people's complaints are waiting. We've been taking long enough as it is, and if we have to delay a year --

THE COURT: Is there any other intelligent way to approach these complaints without compliance with the special compliance questionnaire?

THE WITNESS: The special compliance review is based on the complaints.

THE COURT: Is there any way of isolating the information sought as to directing yourself more directly to the complaint?

MR. CARO: My point is that -- I understand what the Court is driving at but I ask the Court to bear with us a little until Miss Thomson describes the classes of complaints that we have, and then the question will be able to be answered in a more comprehensible manner.

BY MR. CARO (Cont'd):

Q The remedial actions which, or potential

findings, which are now to be anticipated in late November, early December of '76, will that be based on this year's data?

A Yes, it will be based on this year's data, and it will be based on other patterns of analysis which will be based on 1973, '74 data -- 1974, '75, and then the most specific data which is 1975, '76.

Q So that they will show whether or not potential violations have occurred, where and how long they've occurred, and how widespread they are?

A Yes.

THE COURT: But you don't have special compliance reports with regard to '73, '74?

THE WITNESS: In 1973, '74, and '74-75, we have the bulk data sources which we identified and collected, things already collected by either the Central Board or the State or the Central Government.

Q Could you describe your recollection of the February 11, 1976 meeting between OCR and the City officials respecting the OMB clearance question?

A The way I remember that meeting the people present were Mr. Vigilante, and Diane May, and Carol Campbell, and myself, and another person from OCR. I don't remember that you were there. I remember that there was an

offhand remark made whether OMB clearance would be obtained.

THE COURT: Who made the remark?

THE WITNESS: I think it was Mr. Vigilante, about whether OMB clearance was to be obtained.

THE COURT: I would, of course, strike "offhand remark" if I wanted to be hypertechnical.

A (Cont'g) There was a remark made about whether OMB clearance in the rest of the data collection instruments was being used in the six districts, and I think I said, no, we're not getting OMB clearance on any of these forms.

Q What was Mr. Vigilante's reaction to that?

A He didn't respond.

THE COURT: Did he indicate where he had asked that question?

THE WITNESS: No.

THE COURT: Did he indicate that he was going to condition any clearance on the existence or non-existence of OMB clearance?

THE WITNESS: No.

THE COURT: In other words, you've given us the entire substance of the conversation?

THE WITNESS: Yes.

Q Was there any indication afterwards that the City would not fill out the form unless OMB clearance was

obtained?

A No.

Q Do you have any personal knowledge of a copy of the City's letter to the office, OMB office, being received by the Washington office?

A No.

Q The first indication that OCR had from the City that it would not fill out the forms was received when? Do you recall the first time when the City indicated that in one way or another it would not fill out the forms?

A Yes.

Q Are you familiar with Government's Exhibit 9?

A Yes, I am. That is a letter from Dr. Gifford to Martin Gerry, dated May 3, 1976, indicating that he was not intending to fill out the forms, or at least he wanted further information from OCR about the OMB clearance process.

Q The City's objection to not going ahead and having the form filled out in that letter, was that based on the grounds that the forms did not have OMB clearance?

A Yes.

Q Please read the letter and see.

(The witness complies.)

THE COURT: Could you repeat the question?

Q Was the City's objection based on the grounds

that the special compliance reports were not approved by OMB?

THE COURT: I think the letter will speak for itself.

MR. CARO: The point that I was trying to make, your Honor, if you read the letter a little, the gist of the letter is not objecting to the forms there as not having OMB clearance, because at that point OMB had already advised the City that they did not need clearance, and that the City's objection at that --

THE COURT: -- was based on the fact of specific complaints.

MS. KUDER: I would like to have the letter speak for itself, and have Dr. Gifford come.

MR. CARO: We did try to get Mr. Gifford here and twice we tried to serve him with a subpoena and it was not accepted.

THE COURT: Go on.

BY MR. CARO:

Q Are you personally familiar with the complaints that OCR has with respect to New York City's public school system?

A Yes.

Q Do they include the complaints received in 1972

and referred to in OCR's letter of July 18, 1972?

A Yes, they do.

Q Has OCR received complaints subsequent to that time?

A Yes, OCR has received numerous complaints during the time.

Q Including the current academic year, including the time of the conducting of the investigation?

A Yes, sir.

Q What type of allegations generally do the complaints make?

A There are three different types of complaints. There are broad types of complaints which allege systemic discrimination against a particular class of clients protected by OCR. And they tend to identify New York City, and they tend to identify a particular problem. But they don't identify individual students or schools being involved in the discrimination.

Then the next kind of complaints are allegations of specific types of discrimination where particular classes of students are identified and in most cases either a particular community school district is identified, and perhaps a particular school, but not particular individual students.

Then the final type of complaint is a complaint by an individual person, perhaps a parent, which may identify specific students, or one particular student. And they will outline a very specific type of discrimination which is being alleged.

Q Are all the particular types of complaints susceptible to being identified in a statistical manner in the report by the information you are seeking? In other words, the information you are seeking, is that designed specifically to, shall we say, substantiate the widespread existence of a type of complaint that you've heard?

A Yes.

Q The various allegations made in the complaint, have they ever been analyzed, or presented, in a public document, the violations that are being examined, the nature generally?

A A lot of the allegations are typical kinds of complaints which the office receives very often from a lot of different kinds of school districts. An obvious example is services to Puerto Rican students, and OCR has an issues-outline which overlaps quite a lot of the complaints it has received.

Q Are you familiar with the Exhibit No. 14, Mr. Gerry's affidavit of 1976?

A Yes.

Q In that affidavit was there a statement as to the area of investigation, the area of possible violations that were being examined in detail; was that presented in that affidavit?

A Yes, it was. There are six issues that are outlined in that affidavit.

MS. KUDER: Is this the affidavit of what date?

MR. CARO: March 3rd.

A (Cont'd) It oulines six areas which are specific areas of investigation.

THE COURT: Could I just see this for a second? Do you want to examine that?

MS. KUDER: I would like to see that.

THE COURT: This is Mr. Gerry's affidavit?

MR. CARO: Yes. There are two of Mr. Gerry's affidavits.

THE COURT: This is Exhibit 14?

MR. CARO: He was describing the areas of examination.

THE COURT: The specific complaints?

MR. CARO: It wasn't described, the specific complaints, but these were geared to the areas

referred to in the complaints, as well as from the data.

THE COURT: Yes.

MS. KUDER: From the limited reading I've done so far, I would object to the characterization, I guess ,when you read what Mr. Gerry purports to be reporting here.

THE COURT: Mr. Gerry is not testifying here. This is just more or less to understand this witness' testimony as to whether or not they were addressing themselves to certain specific problem areas.

MS. KUDER: But she can't speak for Mr. Gerry.

MR. CARO: She's not speaking for Mr. Gerry.

THE WITNESS: I'm saying that I'm familiar with these issues.

THE COURT: They are just being labeled as issues without any judgment being made as to whether those issues are founded or not. In other words, the sort of issue that the statistical data is designed to reflect that can provide information that would substantiate or not substantiate.

MS. KUDER: Is it the Court's understanding that you are going to get testimony as to the areas

that have come up because of specific complaints?

THE COURT: Not the types of complaints coming across their desk and so forth without whether or not their complaints have been validated.

MS. KUDER: But I'm not sure the areas outlined here have anything to do with specific complaints at all.

THE WITNESS: That's what we're talking about. These are areas of civil rights compliance interest to OCR.

MS. KUDER: General compliance interest?

MR. CARO: It's just more convenient for the Court and for counsel as an aid in understanding.

THE COURT: I take it you are just trying to illustrate the information sought would indicate the compliance or noncompliance with six areas.

MR. CARO: These were the general areas of investigation.

MS. KUDER: As I understand it, these were areas of compliance or noncompliance in general, total, with all possible requirements of the Civil Rights Act, and not areas of compliance in terms --

THE COURT: They are fairly broad.

MS. KUDER: Yes, compliance in general with

the Civil Rights Act.

BY MR. CARO:

Q In your judgment and in OCR's estimation, if a particular complaint alleged a particular violation in a particular school were based on other data that OCR felt was typical, would OCR be investigating the possible existence of that violation not in the district to which the complaint was directed but in other districts?

A Yes, it would.

Q Is it OCR's policy to keep complaints received confidential?

A Yes, it is.

Q Are there any circumstances, or at any point in time, in which the complaints are disposed of?

A Well, OCR has a regulation, HEW has a regulation, and two sections of that regulation talk about keeping complaints confidential, 80.6(c) and 80.7(e).

MS. KUDER: I'm concerned about the witness testifying as to conclusions of law.

MR. CARO: She is an attorney. She's referring to where the statements are.

MS. KUDER: What OCR's policy is is something different than what the law provides for.

THE WITNESS: OCR's policy derives fromthese

two particular sections in the regulation.

THE COURT: The witness is testifying as to what the OCR policy is. She's merely pointing out as a point of reference the regulation basis for the policy -- am I correct? And it is allowable, we're suggesting the regulation gives us a point of reference.

A (Cont'g) OCR has had many cases where requests for complaints have been made and it is always said that based on the regulation and also exemption seven of the Freedom of Information Act,that complaints cannot be disclosed.

Q Would disclosure of the complaints, specific complaints, adversely affect OCR's investigatory efforts and law enforcement interests?

THE COURT: I believe you're calling for a conclusion now.

MR. CARO: I think under the cases we're required to state our reasons why we believe Exemption 7 should be applied.

MS. KUDER: Is the witness going to give specific reasons?

MR. CARO: She will give them related to the broad categories of complaints.

THE COURT: Where the disclosure of the complaint would prejudice the enforcement of the Civil Rights Act?

MR. CARO: Yes.

THE COURT: I wonder if she is competent to give that, lawyer or nonlawyer, because this is one of the conclusions I might have to reach.

MR. CARO: True, your Honor, but I think it is based on OCR's experience.

THE COURT: Well, she can give me statistical data for it. She can testify from experience as to in what way the enforcement of the Act has been inhibited by the disclosure of the complainants, chapter and verse. That would be one thing, but to state a broad opinion would be objectionable.

MR. CARO: What we'd do then, your Honor, is reserve the right in an in-camera inspection to take typical examples.

THE COURT: And I take it an in-camera inspection would show the way disclosure would kill compliance, and the nature of that kill?

MR. CARO: It would.

THE COURT: So you are going on hyperbole when you are saying that the enforcement of the Act

would be prejudiced by enforcement of the complaint. You have no experience with the Act, shall we say, frustrated by disclosure of the complaint?

THE WITNESS: OCR has never had to disclose the complaint.

MR. CARO: It is made as a basis of OCR policy what they feel would be the adverse impact, or detrimental impact.

MS. KUDER: I had a question in terms of relevancy. Here we are talking about a specific type of disclosure New York City is asking for. I mean it's a very particular type of situation, and whatever your fears and conjectures are about the ramifications of disclosure they might be totally irrelevant because that is not the case in question here with respect to what New York City is asking for.

THE COURT: I don't think the City has raised the Freedom of Information Act. They are now claiming that they are entitled to it, just in order to confront an accusation.

MS. KUDER: In order to deal with an investigation pursuant to 80.7.

THE COURT: I think we are all going pretty

far afield. I think the only issue at this hearing is whether the City would be presented with an undue burden in complying, and you are giving me the background, and the purpose, just so we can put the nature of the survey in a proper frame of reference. But we're going to have to determine the need.

MR. CARO: If we're going to proceed on the assumption that the City's request to obtain the complaints, specific copies of the complaints, is based on the understanding that the complaints are exempted, I'll be willing to then proceed in the presentation of the facts under that assumption.

MS. KUDER: Exemption under what: the Freedom of Information Act?

MR. CARO: Is it your position that you are entitled to see the specifics of the complaint, notwithstanding Exemption 7 applies?

MS. KUDER: We're asking, we're askingfor specifics. I mean, Mr. Vigilante is prepared to testify as to how the investigation's disclosure of specifics would enable him to perhaps provide the data, responding to that complaint, in a much more limited and modified manner.

THE COURT: Aren't the issues more properly

placed within that frame, number one, the Government is seeking to enjoin the Board of Education for noncompliance based on the irremediable harm that would occasion to the whole research project, or whether it is the students by the late compliance or noncompliance by the City?

MR. CARO: And to the victims of any illegal discrimination.

THE COURT: Of course. Well, the purpose of the Act is to protect the victims of any discrimination, and the City is seeking what is analagous to a protective order, or a subpoena or discovery, on the ground that compliance would be unduly oppressive.

Aren't those the essential issues of this hearing?

MS. KUDER: Right now I think so.

MR. CARO: I think yes, your Honor. I think that the City has directly asserted a right to see the information, and they are saying we're not satisfied with OMB's determination.

THE COURT: No, the City is seeking, I believe, a protective order; in other words, on the basis that you are imposing an inordinate burden on the

City. The Government is claiming that that burden must be imposed, and now in order to vindicate the purposes of Civil Rights legislation.

MR. CARO: But the reason why again --

THE COURT: I don't think the City is really claiming that they want to see the exact complaints except in the context of being in a position to comment on whether the Government is using too broad a shotgun approach; is that correct?

MS. KUDER: That is correct. We are seeking a protective -- in essence, a protective order.

THE COURT: And the operation invovled there would be some need to determine whether there is a rational connection between the information sought and the statutory purpose to be accomplished.

MR. CARO: I think what they are saying is something a little bit further too. I think what they are saying, again, is that they want to be able to make the judgment of whether the information sought in the special compliance reports is relevant and necessary to ascertain the existence of some very specific violations alleged in the complaints, which I'm claiming as a far narrower issue than just the broad relevancy test; and

Mr. Vigilante, I believe, here today has admitted that.

MS. KUDER: We're seeking enough disclosure of specifics because we're not quibbling. We don't want to sit down and justify to the nth degree, and Mr. Vigilante feels that disclosure of specifics to a certain level will just enable him to comply reasonably.

THE COURT: In other words, the City's position is that if it knew why it wanted the information it would carefully comply?

MS. KUDER: The City's position is if we knew more directly why they wanted the information --

THE COURT: -- you would more intelligently comply.

MS. KUDER: Mr. Vigilante also feels if they had a certain complaint he feels he might know that you want information you haven't even asked for. But in order to address myself to it I would have to have an intensive in-camera inspection of the complaint.

MR. CARO: But getting to the defendant's relief would perforate the burden for the City to comply. There is also raised an objection to their

being required to go forward even on a preliminary basis, their right to disclosure of the specifics of the complaints.

So I think the issue of whether or not they have a right to disclosure of specifics of the complaint is a part of this present controversy and has to be resolved now.

MS. KUDER: We're asking for disclosure. We're saying that a protective order would be for more helpful disclosure than we've received to date. That's the nature of the request for a protective order, and why we feel that's the type of relief that would be given in a protective order in this case. That's what would afford protection against an unreasonable burden. And we're not talking, the City isn't talking about the Freedom of Information Act.

THE COURT: In other words, if the information could be made available to you under the exemption, then you are not entitled to it on any theory.

MS. KUDER: Under 45KFR which says --

THE COURT: One is a federal regulation and one is a statutory regulation. Wouldn't Exemption 7

supersede any implied language that you find in 45CFR?

MS. KUDER: Perhaps I'd have to answer that question Monday.

THE COURT: In other words, if you are not entitled to it under an exemption in the Freedom of Information Act, there is nothing in the 40-plus federal regulation that is going to entitle you to it. In other words, if there would be a rational way for the City to obtain that information without undue oppression, to be quite frank, the Government is going to get it. In other words, I mean, I haven't made any findings yet, because you haven't cross-examined or presented your own evidence. But maybe I shouldn't say that now, but my own inclination now in my report to Judge Weinstein, of course, it is going to be his decision, not mine, is that in the event that if I find that no undue burden is going to be placed on the City in the gathering of this information, I'm going to recommend to Judge Weinstein that the City be directed to provide the information.

In other words, if you are talking in terms of a half day of teacher time, if that is not quite what is going to be required, if it's 25 to 40 minutes of teacher time, then I think we're in a different, you

know, then I'd see the problem somewhat different than the way you present it.

MS. KUDER: I think we both see the problem in the same light now, I think.

THE COURT: In other words, let me just ask you a few questions. You recognize that the Government would be entitled to a general compliance information, is that correct, because they have provided the funds to the Board of Education, and they are entitled to make compliance reviews?

MS. KUDER: To make compliance reviews, yes.

THE COURT: And if a compliance review could be conducted in a manner that would not place an undue financial strain on the City of New York, or the students and teachers of the school system, you would have no objection to complying because you recognize your obligation to comply?

MS. KUDER: Except that we have an obligation to comply in terms of general compliance reviews, with general compliance reviews which have gone to OMB and have been scrutinized in terms of burden placed on the City.

THE COURT: You are saying now in order to avoid undue burden on you you would be entitled to

an OMB clearance?

MS. KUDER: Yes, OMB clearance would protect. If there would be a general compliance review it would be to OMB clearance.

THE COURT: Assuming hypothetically, forgetting about the facts of this case, assuming the City were asked to give certain compliance data, and that compliance data would take one minute per teacher in the New York City school system, would you have any objection to complying with that data request?

MS. KUDER: I don't think so.

THE COURT: So it all boils down to the amount of time?

MS. KUDER: Yes, it's clearly the concern of the Board of Education. The concern here is the burden.

THE COURT: And you are not imposing any claim based on the Government's non-entitlement to that information except that it places an undue strain upon the City; is that correct, or the Board?

MS. KUDER: Except if it turns out to be something other than a specific investigation of specific complaints. Assuming that it's a specific investigation of specific complaints and then we're

saying that an undue burden would be our objection.

THE COURT: In other words, the same one-minute questionnaire, going back to my simple one-minute questionnaire, that one-minute questionnaire would become oppressive because it goes to specific complaints where it would not be oppressive. Why?

MS. KUDER: A one-minute questionnaire I do not think would be oppressive.

THE COURT: So I think the issue we would best address ourselves to is, is the burden placed upon the City minimal? The City, I take it, has proof to offer that it would not be so. I wonder if we are going too far afield in view of the fact that the City has taken the position on the record now that the gravamen of their objection is oppression and not your entitlement to the information. They are not going to question your right to cull the information.

MR. CARO: But they did raise a second objection which if you read the papers even comes across as their main objection.

They have just indicated if it were not oppressive they would not be concerned that the requests were generated by specific allegations of

violations as opposed to general compliance information.

Again, it comes down to the fact that if its an investigation of specific complaints as well as other violations and they find that out, what made compliance with this oppressive, when before they found out that complaints existed which our argument was they always knew it existed, and that was the reason for the entire compliance examination, what makes it oppressive now.

Their position in February when they agreed to a schedule was not that it wasn't oppressive. All of a sudden it's become oppressive. Their main objection, and I think it is correctly stated in their papers, is that they are saying they have a right to get a hold of specific allegations in the complaint and make that judgment.

If they are withdrawing that then, perhaps --

THE COURT: I don't think they are quite withdrawing that. I believe the City's position is now that since you've decided to have a shotgun approach and ask what in their opinion are a lot of detailed and perhaps unnecessary questions that had they known, had they been told the nature of the

complaint, they might have some suggestion for even compressing the information you need, or even expanding it; am I correct?

MS. KUDER: Yes.

MR. CARO: That doesn't render the investigation oppressive. What I'm saying is the amount of time taken out to fill these forms last February or this month is unchanged. That's a constant. What has changed is that first they tried to avoid filling them out by raising the OMB clearance. They sent the forms in, OMB examined the forms in detail.

THE COURT: OMB did examine the forms?

MR. CARO: Yes, the forms were sent to OMB. OMB said they were exempt. HEW's position is that any of the forms that were given out as part of the special compliance examination, other than the 101s within the investigatory examination that OMB was talking about.

MS. KUDER: Wait. OMB said the use of these forms in other cities would require OMB approval.

MR. CARO: Here is part of the problem. We have testimony that establishes that that statement in OMB's letter was made without HEW submitting any of the special compliance reports for other cities

that were being developed through OMB. These reports were never shown to any of the other cities. I don't know the place that statement was made. It's a gratuitous remark. I don't have the record, I can't make any judgment as an assistant United States attorney on behalf of the United States whether OMB in my opinion went beyond the record, whether it was just what it was talking about. I have no ground to make that judgment.

And gain, it is our position that OMB's determination is not properly challengeable on this proceeding. If they object to OMB's determination there are procedures in the Federal Report Act to pursue before OMB. To myknowledge it hasn't been pursued. They haven't tried to enjoin OMB here. So as far as we're concerned OMB's determination that the special compliance reports are excluded from the mandate of getting approval is binding on this Court and on the parties.

If you want to breach it, the entire compliance examination was an investigation, initially an investigation of possible violations of law which were alleged in the complaints, which were then begun to

be substantiated by preliminary data included, which may have shown the existence of other possible violations related or unrelated.

How do you then separate out and say, well, yes, 24 relates 90 per cent to allegations in 50 per cent of the complaints and 10 to the data, and therefore we need OMB clearance of 10 per cent of Question 24? How do you do that? The Government can't operate that way.

MS. KUDER: The City has been told, it came to our attention in April that this form is being used in pursuit of the specific investigation of specific complaints. Concern at that time caused us to delay distribution of the report, and concerns also on the part of the Office of Educational Statistics were "If that's what you want, let's help. I've cooperated with you before.

THE COURT: Had you distributed the records earlier would it have been less of a burden to comply?

MS. KUDER: In terms of taking one-half day's time?

MR. VIGILANTE: The time would have been there. The question remains, you could say, well, we had a month to do it, it would have been better,

but our experience has been that even when you give schools, let's say, in a survey like this, you give a month to do the survey, that the very nature of the survey, that is administrative, it would be done when everybody is there, that it could be controlled and there are two days to draw districts together with teachers and staff of that school are directed as to the questions there because of a great involvement in the collection; but it's hard to argue. We have testimony as to our experience in the last two previous years' surveys.

THE COURT: Have you ever conducted surveys that would give you some basis to appreciate the amount of time?

MR. VIGILANTE: Oh, yes.

THE COURT: Off the record.

(Discussion held off the record.)

THE COURT: Let me say the matter is adjourned to Monday, May 24, at 10:30 a.m. Thank you all.

(Time noted: 5:35 p.m.)

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CC

U.S. DISTRICT COURT
DISTRICT COURT E.D. N.Y.

MAY 27 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action
No. 76 C 861

- against -

THE BOARD OF EDUCATION OF THE
CITY OF NEW YORK, et al.,

Defendants.

- X

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REPORT OF THE SPECIAL MASTER

(9)

BEST COPY AVAILABLE

Because of the need to give expedited consideration to plaintiff's application for a preliminary and permanent injunction, with the consent of the parties, the Hon. J.B. Weinstein, United States District Judge, appointed the undersigned United States Magistrate pursuant to 28 U.S.C. §636 and in accordance with Rule 53, Fed. R. Civ. P., to act as a Special Master in this matter, to conduct a hearing and to report to the Court the Special Master's proposed findings of fact and conclusions of law. Accordingly, a hearing was held on May 21, 1976, and further proceedings were conducted on May 24, 1976. Extensive argument was also heard on both days.

SUMMARY OF THE CONTROVERSY

This action was initiated by the United States of America on May 10, 1976, to obtain injunctive relief requiring the defendants to timely provide the office for Civil Rights of the Department of Health, Education and Welfare ("OCR") the information sought in certain documents, i.e., Special Compliance Reports, and EEO-5 Forms. 1/ Pursuant to an Order to Show Cause why a preliminary and permanent injunction should not be granted, hearings were held before the Hon. J. B. Weinstein on May 13, 1976 and May 17, 1976. Although defendants opposed the Government's application, defendants on May 17, 1976, voluntarily began to distribute the Special Compliance Reports

1/ No objection was raised to the timely completion and submission of the EEO-5 Forms.

to the district offices of the local community school boards, together with instructions, for completion by the education officials.

It was defendants' position that the completion of the Special Compliance Reports might necessitate the declaring of an administrative half-day in order to provide time for teachers to supply some of the information sought by the Special Compliance Reports and that such a disruption would cause irreparable injury to defendants and to the educational process. Defendants further opposed the Government's application on the grounds that they have not been able to determine whether the information sought was relevant to the violations alleged in complaints being investigated by OCR and accordingly sought a protective order. Defendants also argued that to the extent the Special Compliance Reports sought information not relevant to the investigation of these violations, the Special Compliance Reports required the approval of the Director of the Office of Management and Budget under the Federal Reports Act of 1942. 2/ 44 U.S.C. §3309. [Defendants otherwise acknowledged

2/ Upon inquiry by defendants, OMB had determined that the Special Compliance Reports were exempt from the provisions of the Federal Reports Act of 1942 because the reports were part of OCR's investigation of complaints alleging possible violations of law.

the Government's right to obtain the information sought.]

The Government claimed that Exemption 7 of the Freedom of Information Act, 5 U.S.C. §552(b)(7)(A)-(E), protected from disclosure the specific allegations of the complaints and further that defendants were not entitled to ascertain what information was relevant to the investigation, but only whether the subject matters under investigation were matters within OCR's scope of responsibilities. The Government also contended that the question of OMB approval was not properly before the Court, and alternatively that the Special Compliance Reports did not require OMB approval since the reports were part of OCR's formal investigation of possible violations of law and that, even if approval were needed, failure to obtain OMB approval did not relieve defendants of their obligation to supply the information sought.

Defendants further represented that should it be found that they are required to complete the Special Compliance Reports, they preferred to do so now rather than to have to do it during the next academic year. Also defendants voluntarily began to distribute the Special Compliance Reports to the local districts on May 17, 1976, for completion and return to the defendant Board's Office of Educational Statistics by June 14, 1976.

On May 21, 1976, testimony 3/ was taken and evidence was received and arguments were heard. On May 24, 1976, it was determined in conference with counsel, at which proffers of proof were made, that the controversy could be resolved upon an in-camera inspection of the complaints to ascertain the relevance of the information sought in the Special Compliance Reports. 4/

FINDINGS OF FACT

1. Defendants herein have cooperated fully with all phases of the Government's in-depth compliance examination of the public school system of the City of New York so far as the evidence before the Special Master shows. As further evidence of their good faith, after the initiation of this action defendants voluntarily undertook the distribution of the Special Compliance Reports and have taken other measures for their completion and return to OCR before the end of this school year. OCR on its part has been sensitive to the needs of the City and has attempted as far as reasonably possible to reduce the burdens of the study.

3/ Testimony was given principally by the Government's witnesses, but at certain points, the testimony of defendants' witnesses was also taken.

4/ The Government objected to an in-camera inspection for this purpose, contending that the inquiry was limited to ascertaining whether OCR was investigating matters within its general authority.

2. It was uncontested that defendants executed an Assurance of Compliance and have continued to receive substantial Federal financial assistance.

3. An in-depth compliance examination of the NYC public school system was initiated in 1972. At the time OCR advised defendants of the existence of various complaints alleging violations of law respecting illegal discriminations on the grounds of race, color, ethnic origin, sex and handicaps in the NYC public school system. As part of this comprehensive and system wide investigation, data has been collected from various sources and certain schools were chosen to undergo individual on-site examinations. The Special Compliance Reports, which are the subject of the present controversy, constitute the final phase of this investigation and were designed to obtain detailed information relevant to ascertaining whether certain violations of law existed.

4. Defendants first learned of the Special Compliance Reports in February 1975. Representatives of the defendants worked with representatives of OCR in revising and modifying the questions and defendants subsequently amended their own information gathering instruments so that part of the data sought in the Special Compliance Reports could be collected in advance. OCR, on its part, attempted to accomodate itself to the recommendations and suggestions made by the defendants, and had substantially reduced the amount of information sought.

5. On February 11, 1976, defendants received the final, printed version of the Special Compliance Reports, and subsequently a mutually acceptable schedule for the distribution and completion of the Reports was set. In March this schedule had to be revised because of certain delays encountered.

6. By letter dated April 8, 1976, defendants inquired of OMB concerning the necessity for approval under the Federal Reports Act of 1942, and submitted to OMB complete copies of the Special Compliance Reports. OMB subsequently responded by letter dated April 26, 1976, and stated its determination that the Reports were not subject to Federal Reports Act in that they dealt with specified complaints. During this period the Reports were not distributed and the revised schedule was not adhered to because of defendants' concern about the propriety of the Reports.

7. On April 30, 1976, after efforts to persuade defendants to distribute the reports failed, OCR sent a mailgram to defendant Chancellor Anker, stating that legal action would be undertaken if the Reports were not distributed. By letter dated May 3, 1976, defendants advised OCR that OMB had indicated that the Reports were part of an investigation of specific complaints and requested disclosure of the specific allegations of the complaints. Defendants' concern was that to the degree unnecessary data was requested it could be agreed that they not supply the information and thereby reduce the burden on the school system. By letter dated May 10, 1976, OCR refused to disclose the complaints and denied defendants' request

Between April 30, 1976, and May 10, 1976, several informal futile attempts to have the Reports distributed were made by OCR and on May 10, 1976, ten days after the date of notification that legal action would be taken, this action was commenced.

8. Plaintiff presented evidence that if the Special Compliance Reports are not completed this year, but delayed till next year, this would necessitate OCR to redo all of this year's investigative work, including the on-site compliance examinations of schools.

CONCLUSIONS OF LAW

1. The Government is entitled to obtain the information sought in the Special Compliance Reports and the EEO-5 forms under its statutory duty to investigate violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d et seq., Title IX of the Education Act Amendment of 1972, 20 U.S.C §§1681 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and under the applicable regulations, 45 C.F.R. §80.7. Conversely, defendants are required to provide such information under 45 C.F.R. §80.6 and §80.7 and as a matter of contractual obligation.

2. Since the Government has a right to obtain this information, the cost and burden of compliance is not a defense and since defendants represented to the Court that if they should be required to complete the Special Compliance Reports, they preferred to do so now rather than during the next academic year any question concerning the Government's need to acquire the

information prior to the close of this academic year is not in dispute.

3. The complaints and specific allegations of the complaints are exempt from disclosure under Exemption 7 of the Freedom of Information Act, 5 U.S.C. §552(b)(7)(A)-(E).

4. Since the Special Compliance Reports seek information pertinent to an investigation of possible violations of law within a particular school system rather than as part of a survey of school systems in general, and circumstances relevant thereto, the requirements of the Federal Reports Act of 1942 are not applicable.

5. Upon an in camera examination of the complaints, the following determination respecting the relevancy of the system-wide information sought by OCR in the Special Compliance Reports were made:

A. THE SPECIAL COMPLIANCE REPORTS FOR ELEMENTARY SCHOOLS

QUESTIONS 6, 7, 8 - Acceptable - Should Be Answered.

QUESTION 9 a,b,c, - Acceptable - Should Be Answered.

QUESTION 9 d - Acceptable - Should Be Answered.

QUESTION 10 a,b,c - Acceptable - Should Be Answered.

QUESTION 11 - Acceptable - Should Be Answered By The Bilingual Coordinator of the School, But It Is Ultimately Left To The Discretion Of The Principal As To Who Should Answer This Question.

QUESTION 12 - Acceptable - Should Be Answered.

QUESTION 13 - Acceptable - Should Be Answered.

QUESTION 14 a - Acceptable - Should Be Answered.

QUESTION 14 b - Acceptable - Should Be Answered.

QUESTION 15 a - Acceptable - Should Be Answered.

QUESTION 15 b - Acceptable - Should Be Answered.

QUESTION 16 - Acceptable - Should Be Answered.

QUESTION 17 - Acceptable - Should Be Answered.

QUESTION 17 - Acceptable - Should Be Answered.

QUESTION 18 - Acceptable - Should Be Answered.

QUESTION 19a-e - Acceptable - Should Be Answered.

QUESTION 20 - Acceptable - Should Be Answered.

QUESTION 21 - Acceptable - Should Be Answered.

QUESTION 24 - Acceptable - Should Be Answered.

QUESTION 25 - Acceptable - Should Be Answered.

QUESTIONS 26-44 - Acceptable - Should Be Answered.

QUESTIONS 45, 47, and 49 - Acceptable - Should Be Answered. Estimate Is Required. There Is No Need To Involve Classroom Teachers At All And HEW Would Be Content With Any Reasonable Estimate. There Is No Requirement That A Survey Be Conducted.

QUESTIONS 46, 48, and 50 - Acceptable - Should Be Answered.

QUESTIONS 51-53 - Acceptable - Should Be Answered.

B. SPECIAL COMPLIANCE REPORTS FOR JUNIOR HIGH, INTERMEDIATE HIGH AND HIGH SCHOOLS

QUESTIONS 6,7,8 - Acceptable - Should Be Answered.

QUESTIONS 9,10, 11 and 12 - Acceptable - Should Be Answered.

QUESTIONS 13,14, 15, 16 and 17 - Acceptable - Should Be Answered.

QUESTION 18 - Acceptable - Answers To Columns XI And XII Should Be Given. At The Option Of Defendants, Answers To Columns I-X and XIII-XVI May Be Given.

QUESTION 19 - Acceptable - Should Be Answered.

QUESTION 20 - Acceptable - Should Be Answered.

QUESTION 21 - Acceptable - Should Be Answered.

QUESTION 24 - Acceptable - Should Be Answered.

QUESTION 25 - Acceptable - Should Be Answered.

QUESTION 26 - Acceptable - Should Be Answered.

QUESTION 27 - Acceptable - Should Be Answered.

QUESTION 33 - Acceptable - Should Be Answered.

QUESTION 34 - Acceptable - Should Be Answered.

QUESTIONS 34-40 - Acceptable - Should Be Answered.

QUESTION 41 - Acceptable - Should Be Answered. No Answer Is Required By High Schools.

QUESTION 42 - Acceptable - Should Be Answered.

QUESTIONS 43-51 - Acceptable - Should Be Answered.

QUESTIONS 52-60 - Acceptable - Should Be Answered. Estimate Is Required, There Is No Need To Involve Classroom Teachers At All And H.E.W. Would Be Content With Any Reasonable Estimate. There Is No Requirement That A Survey Be Conducted.

QUESTIONS 61 - 64 Acceptable - Should Be Answered.

6. In light of the short amount of time left before the close of the school year and the need for the Government to do the necessary follow-up work, defendants are also required to render all reasonable assistance and cooperation to the Government to assure full completion of the Special Compliance Reports and the EEO-5 Forms.

Dated: Brooklyn, New York
May 27, 1976

Simon Chrein
United States Magistrate

The report is accepted upon reading and not information that the parties want.
SO ORDERED:

May 27, 1976

UNITED STATES DISTRICT JUDGE

The clerk will file and docket
Jaw

5/28/76

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

May 28, 1976

To:

The Members of the Community School Boards
The District Superintendents
Principals and Teachers

In July 1972 the Department of Health, Education and Welfare initiated a comprehensive, system-wide investigation of the New York City public school system to ascertain if any persons -- children, teachers, or others -- were being discriminated against because of their race, color, national origin, because of their sex or because they were handicapped.

Recently, the Government had to initiate court action to assert its right to gather information necessary to this investigation, i.e., the information sought in the Special Compliance Reports and EEO-5 forms. The Court has determined that the Government has the right to obtain this information and in order to assure that the information is obtained before the end of this school year, it has entered an injunction order and directed that it be served on educational officials in supervisory positions and posted in the schools for all teachers and other school officials to see and read. This information must be obtained this year because it must be collated with other data collected this year. If it is not obtained, all the information obtained this year will have to be acquired again next year, thereby needlessly delaying the completion of this four year study.

PLEASE READ THE ORDER CAREFULLY

The fact that copies of this injunction order are being so served and posted is not intend-

ed to suggest that any of you have or will disregard the law or the order of the Court. On the contrary, your past cooperation with the Government leads this office to believe that you will render every assistance possible for the successful completion of this last phase of H.E.W.'s investigation. The reason for the distribution of the order is to assure that these questionnaires are fully completed as soon as possible and that you may know what you are required to do. It will also allow the Government to take immediate action to compel compliance in the unlikely event someone subject to the injunction willfully violates the Order.

Sincerely,

David G. Trager

DAVID G. TRAGER
United States Attorney

CIS:RPC:ija
F. #760,665

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

- X

ORDER

Civil Action
No. 76 C ~~681~~ 861

This cause and the parties hereto having come to be heard on plaintiff's application for a preliminary and permanent injunction, and upon the consent of the parties and pursuant to 28 U.S.C. §636 and in accordance with Rule 53, Fed. R. Civ. P., the matter having been referred to a United States Magistrate duly appointed to act as a Special Master to hear and report, and a hearing and other proceedings having been held before the Special Master on May 21 and May 24, 1976, and David G. Trager, United States Attorney for the Eastern District of New York, by Richard F. Caro, Assistant United States Attorney, of counsel, appearing for plaintiff, and W. Bernard Richland, Corporation Counsel of the City of New York, by Beryl Kuder, Assistant Corporation Counsel, of counsel, appearing for the defendants, and the Court having considered the complaint and the affidavit of Martin H. Gerry, sworn to May 10, 1976, and the exhibits thereto, submitted in support of said application and the affidavit of Bernard Gifford, sworn to May 17, 1976, and the exhibits thereto, submitted in opposition to said applications and all other papers submitted herein by the parties and upon consideration and review of the proposed findings of fact and conclusions of law of the Special Master which were based in part on his

in camera review of the specific complaints and the testimony given and all the evidence herein and having afforded the parties an opportunity to be heard respecting the proposed findings of fact and conclusions of law, it is hereby:

ORDERED that the proposed findings of fact and conclusions of law of the Special Master are hereby approved and adopted as the findings of fact and conclusions of law of this Court; and it is further

ORDERED that the defendant Board of Education for the City of New York, the defendant members of the defendant Board and the defendant Chancellor, together with their successors in office and their agents, employees, subordinates, and all persons or entities in active concert or participation with them or subject to their supervision in this matter are permanently enjoined from refusing or failing to do the following:

(a) Distributing for completion and answer the EEO-5 forms and the Special Compliance Report for Elementary Schools and the Special Compliance Report for Junior High, Intermediate High and High Schools, or the relevant work sheets, in accordance with the instructions of the Office of Educational Statistics, to all such persons who are to supply information necessary for the completion of the said EEO-5 forms and Special Compliance Reports;

(b) Returning the said EEO-5 forms and Special Compliance Reports, completed and answered, to the Office of Educational Statistics as scheduled, i.e., the EEO-5 forms on or before June 7, 1976, the Special Compliance Reports on or before June 14, 1976;

(c) Rendering such assistance to and cooperation with representatives of the Office For Civil Rights of the Department of Health, Education and Welfare ("OCR") as is required to assure that said EEO-5 forms and Special Compliance Reports are satisfactorily completed in accordance with the findings of fact and conclusions of law of the Court in this action and this assistance and cooperation shall include the identification of the EEO-5 forms and Special Compliance Reports which are incomplete and the identification of those persons who are able to furnish any missing information required by the EEO-5 forms and Special Compliance Reports except to the extent that the Court has determined such information need not be provided;

(d) Delivering to OCR in Washington, D.C., the completed Special Compliance Reports on or before June 21, 1976, and it is further

ORDERED that copies of this Order shall be served upon the defendants, each local community school board, each superintendent of each local district, and each principal of every school which will have to supply information for the completion of the said EEO-5 forms and the Special Compliance Reports, and that a copy of this Order is to be posted in each school in a place in which all faculty members and other school personnel may see and read it; and it is further

ORDERED that service may be affected in any manner permitted by federal or state law, including service by ordinary mail, that representatives of H.E.W. in the New York regional office are hereby appointed to serve this order and that defendants shall render such assistance as is

necessary to allow service of this Order to be made as efficiently and as expeditiously as possible, and such assistance shall include but not be limited to identifying the persons to be served and their respective addresses.

This constitutes the final judgment and order of this Court.

SO ORDERED:

Dated: Brooklyn, New York
May 27, 1976

/s/ JACK B. WEINSTEIN
HON. JACK B. WEINSTEIN
United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -against- THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al. Defendants, -and- COUNCIL OF SUPERVISORS AND ADMINISTRATORS, LOCAL 1, SASOC, AFL-CIO, by its officers, Applicant for Intervention.	:	76 C 861 76 C 1081 (JBW) ORDER TO SHOW CAUSE

Upon the annexed affidavit of Peter S. O'Brien, President of the Council of Supervisors and Administrators, Local 1, SASOC, AFL-CIO ("CSA"), duly verified on the 15th day of June, 1976, the order and judgment of this honorable court dated May 27, 1976 and upon all prior pleadings and proceedings herein,

LET the above-named plaintiff and defendants show cause before this court in Room 10 of the United States District Court for the Eastern District of New York at 225 Cadman Plaza East, Brooklyn, New York, on the 16 day of June, 1976, at 3:30 o'clock in the noon, or as soon thereafter as counsel can be heard, WHY an order should not be made:

JW

1. Granting the motion of the CSA to intervene in the proceeding between the United States of America and the Board of Education of the City of New York, et al.,

76 C 861, pursuant to Rule 24(a)(2), or, alternatively, Rule 24(b)(2) of the Federal Rules of Civil Procedure;

2. Upon the grant of the motion to intervene:

(a) relieving from the judgment and order of the court in Docket No. 76 C 861, the membership of the CSA affected and bound by the aforesaid judgment and order, pursuant to Rule 60(4) and (6) of the Federal Rules of Civil Procedure; and

3. For such other and further relief as to the Court may seem just and proper.

SUFFICIENT CAUSE APPEARING THEREFOR LET SERVICE of a conformed copy of the within order, together with the papers on which it is granted, if personally served upon the United States of America by delivery to the offices of the United States Attorney, located at 225 Cadman Plaza East, Brooklyn, New York, and upon the Board of Education of the City of New York, et al., by delivery to the offices of the Corporation Counsel of the City of New York, located at the Municipal Building, New York, New York, on or before 5 o'clock .M. on June 15, 1976, be deemed good and sufficient service.

Dated: Brooklyn, New York
June 15, 1976
10 o'clock .M.

JACK B. WEINSTEIN
U.S.D.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -against- THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., Defendants, -and- COUNCIL OF SUPERVISORS AND ADMINISTRATORS, LOCAL 1, SASOC, AFL-CIO, Applicant for Intervention.	76 C 861 76 C 1081 (JBW) AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

PETER S. O'BRIEN, being duly sworn, says:

1. I am the President of the Council of Supervisors and Administrators of the City of New York, Local 1, SASOC, AFL-CIO ("CSA"), the sole and exclusive collective bargaining representative of all employees of the Board of Education serving in supervisory or administrative pedagogical positions in New York City. A copy of the collective bargaining agreement is annexed hereto and made a part hereof as Exhibit A.

2. On May 10, 1976, the United States of America instituted an action entitled, United States of America, Plaintiff, against The Board of Education of the City of New York, Isaiah Robinson, Stephen Aiello, Amelia Ashe,

Joseph Barkan, Robert Christen, Joseph Monserrat, James Regan, as members of the Board of Education and Irving Anker, as Chancellor of the Board of Education, Defendants, to enjoin defendants from failing or refusing to furnish certain Special Compliance Reports and EEO-5 Forms sought by the Department of Health, Education and Welfare, Office of Civil Rights ("OCR").

3. Plaintiff asserted its entitlement to the information sought in reliance upon its duty to investigate alleged violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000-d et seq., Title IX of the Education Act Amendment of 1972, 20 U.S.C. §§ 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and under applicable regulations. Upon information and belief, plaintiff's alleged purpose in amassing the information sought through the Special Compliance Reports and EEO-5 Forms is to investigate complaints respecting illegal discriminations on the bases of race, color, ethnic origin, sex and handicaps in the New York City public school system.

4. With the consent of the plaintiff and defendants, a special master was appointed to conduct a hearing and to report proposed findings of fact and conclusions of law. Hearings were held on May 21 and 24, 1976. The special master reported its findings to the court in an opinion dated May 27, 1976.

5. On the same day, May 27, 1976, the District Court (Weinstein, J.) permanently enjoined "the defendant Board of Education for the City of New York, the defendant members of the defendant Board and the defendant Chancellor,

together with their successors in office and their agents, employees, subordinates, and all persons or entities in active concert or participation with them or subject to their supervision in this matter" from refusing or failing to distribute, complete, answer and return the Special Compliance Reports and EEO-5 Forms sought by the OCR.

6. Upon information and belief, an appeal of the District Court's decision has not nor will be taken by the defendants' Board of Education, et al. Indeed, the Board of Education had not actively opposed the application for a preliminary and permanent injunction and the Chancellor had not defended against its grant. Rather on May 17, 1976, defendants allegedly voluntarily began to distribute the Special Compliance Reports to the district offices of the local community school boards, together with instructions for completion by education officials. To the extent that the defendants offered any objection to the injunction application, it was largely a meek protestation that the completion of the requested forms would be administratively burdensome. Defendants otherwise acknowledged plaintiff's alleged right to obtain the information sought.

7. As your deponent has previously indicated, a broad and permanent injunction obtained following representations made by the parties to the action and the hearing before the special master, embracing, in addition to the Board of Education, its members and the Chancellor, all of the Board's agents, employees and subordinates including supervisory employees represented by the CSA.

8. At no time prior to the commencement of the action, or during the course of the ensuing proceedings or prior to the issuance of the permanent injunction were the supervisory employees of the Board of Education advised, notified or otherwise informed of the pendency of the action or permitted to participate or to be represented by counsel in the action even though substantial rights and interests of supervisory employees were affected, impaired, and unprotected thereby. In short, a sweeping injunction was issued against supervisory employees of the Board of Education, without benefit of counsel or opportunity to defend in manifest violation of due process of law.

9. The supervisory employees represented by the CSA claim a substantial, direct and legally protective interest in the aforementioned proceedings -- namely, the right to refuse to identify themselves or require others to identify themselves as being of any race, color or origin, which right is guaranteed by, but not limited to, the penumbra of the First and Fourteenth Amendments to the United States Constitution.

10. That the membership represented by the CSA is so situated that the disposition of the action may as a practical matter impair or impede their ability to protect the above-described interest was dramatically demonstrated only a few days ago. Following the publication of the Court's order, the CSA advised its membership that it had not been involved in the proceedings leading to the order and would accord full legal protection to supervisors who, acting by their conscience and rights protected by the

Constitution, refused to answer the Special Compliance Reports and EEO-5 Forms requiring certain ethnic and racial data to be provided in part by supervisory employees of the Board of Education. Following the dissemination of that information through its "Hot-line", the CSA was promptly served by the plaintiff with an order to show cause why it should not be restrained from rendering such advice through its "Hot-line" and held in contempt of court (Docket No. 76 C 1081). The restraining order was denied and the contempt charges were subsequently dismissed by the Court.

11. That the membership of CSA was inadequately and, in fact, not represented in the original action has already been demonstrated. The Corporation Counsel, whose office appeared on behalf of the defendants, did not, upon information and belief, appear for or represent any person other than the Board of Education, its members and the Chancellor. Even if the Corporation Counsel did purport to represent CSA's membership, it did not adequately represent the interests of supervisory employees.

12. Upon the granting by this Court of intervenor status, your deponent moves for relief from the judgment and order of the Court in Docket No. 76 C 861 upon the ground that the judgment is void for lack of jurisdiction over the supervisory employees of the Board of Education embraced by the injunction.

13. Furthermore, your deponent believes that the findings of facts and conclusions of law adopted by the Court in 76 C 861 were incomplete, and reached without benefit of evidence and argument respecting far reaching

trammeling and chilling of Constitutional guarantees and privileges.

14. Moreover, plaintiff's activities, in connection with its alleged investigation of the public school system of this city, especially in view of its abject refusal to disclose the purpose of that investigation, is fraught with suggestions of harassment and arrogance in the exercise of bureaucratic discretion and power. If indeed it is plaintiff's contention that New York's public school system is discriminatory, it is hardly likely that coercion aimed at a narrow spectrum of employees within the system could reasonably elicit any meaningful information or hope to cure the malady apparently thought to exist. The Court is respectfully referred to a letter to the editor which appeared in the New York Times on June 14, 1976. The view expressed therein eloquently articulates the convictions which the CSA urges upon this Court. (A copy of the letter is annexed hereto and made a part hereof as Exhibit B.)

It hardly requires saying that the public education system of this state is a complex, nearly indefensible skein, overlapped by laws, rules and regulations relating to every facet and pore of that entity. Thus, there are laws governing employment of personnel, school districting, pupil placements and an uncountable plethora of other regulations associated with the delivery of public education in this state.

In the area of employment, for example, nearly every level of government, affected directly or indirectly by laws governing employment, are involved. This State's

Education Law, for instance, determines the manner, method and means of employment for pedagogues and supervisors employed by the various Boards of Education. Community School Boards, in turn, play a significant role in the employment of its personnel, pedagogical and non-pedagogical. Recent judicial determinations, moreover, have placed the examination and employment of supervisory pedagogues under Court supervision (Chance v. Board of Examiners, 70 Civ. 4141). Non-pedagogical personnel are employed pursuant to Civil Service Law and are bound by laws and regulations promulgated by the State and New York City Civil Service Commission. As to all employees, laws and rules governing non-discrimination are applicable and accessible, either through appeals provided in the various laws governing employment, resort to outside human rights agencies or collective bargaining agreements insuring non-discrimination in employment, to mention just a few.

The CSA, as the sole bargaining agent for supervisory pedagogues in New York City, has played an instrumental role in the determination of employment conditions for supervisory employees. It has extracted important commitments from the Board of Education not to discriminate against any employee on the basis of race, creed, color, national origin, sex or marital status. In light of that guarantee and the spectre raised by plaintiff's investigation that unlawful discrimination may be occurring, perhaps even in the area of negotiated employment guarantees, CSA's participation is essential.

It is not the CSA's position that offensive

discriminatory conduct should not be ferreted out and eradicated. Rather the CSA firmly supports policies which have as their purpose the elimination of discrimination of any kind.

The superimposition of numerous laws governing non-discrimination in employment, however, and the obvious participation of the State, City, Community School Boards and Unions in the acquisition and maintenance of employment in the public school system should give ample cause why these various agencies and bodies must first be heard and permitted to state its views before any broad injunction, which may inadvertently trample on protected rights or issues. It is submitted that in the absence of that participation, a reasonable and just determination of the multifaceted and complex issues raised in 76 C 861 cannot be made.

15. The Office of Civil Rights contends that they have enumerable complaints alleging discrimination both in employment and the opportunity to acquire employment. If there is in fact discrimination in employment, the CSA as a bargaining representative has the affirmative duty to eliminate such discrimination. The spectre is also raised that the CSA contract itself may be alleged to contain discriminatory provisions. This position is not far fetched since the Court of Appeals for the Second Circuit recently reversed an order of the District Court modifying the contractual lay-off provision so as to effect racial quotas See Chance v. Board of Examiners, Docket No. 75-7161, Slip Opinion 6589, decided January 19, 1976.

16. An order to show cause is sought rather than by proceeding by Notice of Motion because of the limitation of time already recognized by this Court in its Order of May 27, 1976.

17. No previous application for the relief herein prayed for has been made.

/s/
PETER S. O'BRIEN

Sworn to before me this
15th day of June, 1976.

/s/
Notary Public

LEONARD GREENWALD
NOTARY PUBLIC, State of New York
No. 24-[illegible]
Qualified in Kings County
Commission Expires March 31, 1978

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Plaintiff, :

- against - : 76 C 861

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al., :

Defendants, :

- and - :

COUNCIL OF SUPERVISORS AND ADMINISTRATORS, LOCAL 1, SASOC, AFL-CIO, :

Applicant for Intervention. :

- x

United States Courthouse
Brooklyn, New York

June 16, 1976
2:30 o'clock p.m.

B E F O R E :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER

A P P E A R A N C E S :

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: RICHARD D. CARO, ESQ.,
Assistant United States Attorney

BERYL KUDER,
Corporation Counsel of the
City of New York

MESSRS. FRANKLE & GREENWALD,
Attorneys for CSA

BY: LEONARD GREENWALD, ESQ.

./ss

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THE COURT: Yes.

MR. GREENWALD: If the Court please:

This is an application by the Counsel of Supervisors and Administrators --

THE COURT: I have read all the papers --

MR. GREENWALD: -- pursuant to Rule 24(a)(2) and 60, Rule 60, 4 and 6 of the Federal Rules of Civil Procedure.

Now, as the Court understands and knows, the CSA is the collective bargaining representative for approximately 4,000 supervisors and personnel employees of the Board of Education, and as such it is a party to the collective bargaining agreement which I have attached as Exhibit A to my moving papers.

Without relating a lot of history, I think the Court is aware of the time lapse here from sometime in late May when the United States of America instituted an action against the Board of Education of the City of New York and a Master's report was issued; the matter was referred to a Special Master and a Special Master's report was issued on May 27th, which was approximately ten days, I guess, after the original action had begun. That report, your Honor, was submitted to the Court and the Court noted that the report was accepted upon the reading and the oral information that the parties

consented.

Subsequently, as a result of that Special Master's report and the Court's acceptance of such, a letter was sent out under the caption of United States of America and directed specifically to the members of the Community School Boards, the District Superintendents, Principals and Teachers.

Of course we represent as a class the principals, the teachers are represented by another labor organization. It is very important to us to indicate that a copy of the Order, which is currently a permanent injunction, directing certain compliance, was sent to people who were not represented by the Board of Education and who are not represented either by an attorney at the hearing or whose relationship in some sort of agency relationship is really questionable. The members of the community boards are elected public officials of the State of New York, the community boards themselves possess various powers based on 2590 of Article 52(a) of the Education Law and while the central board in fact is the government for purposes of collective bargaining under the Taylor law, the community boards are in fact the employer.

When I went into this issue just before the hearing opened with the Corporation Counsel to

ascertain whether the Corporation Counsel will oppose, that is whether the Board of Education would oppose our motion to intervene, I asked why certain elements of the public officials and state agency community boards, which are state agencies by the New York State law, why they were not joined in the action, I was told that that was a matter that was up to the United States Attorney.

In any event, as a result of the Court order the Counsel of Supervisors and Administrators were cited by the United States Attorney for contempt in a matter which was brought before your Honor, and there is an order which I have just received this morning. We think that the matter is of substantive issue and all the parties should have been brought in that belonged before you, and that should include the employers, that is the Community Boards which employ 60 percent of the 85,000 employees, and that particularly the CSA, whose membership is vitally involved in this matter to the point that they are in peril by an allegation of contempt. We have submitted a memorandum that I think justifies our situation here since we have been professionally involved with the Board of Education. May I call the Court's attention that as a matter of chance this is the very board with

which we have a matter before this circuit now for six years and which at one point it was found that the Board of Education is an employer and is our opponent in every real sense of the collective bargaining process. They then agreed to vacate a transfer plan of our contact which was without our knowledge. May I say there the motion to intervene was granted and the Court certainly decided one point and that is that it was not appealable because it was the basis of the written settlement.

Further, we subsequently intervened in a matter in which the District Court in the Southern District ordered that we had no standing in a matter involving a racial and ethnic quota ratio, and the matter was taken to the Circuit Court and that was reversed.

In this matter which is of some contention, CSA contends that as the collective bargaining representative, we should have the right to present to the Court the basic issue which we think is paramount and that is whether the United States Government can require public employees of state or municipal agencies whether, as part of their responsibility, they have to identify themselves or others on a racial or ethnic basis, and under this survey, your Honor, that is exactly what is

required of an individual.

THE COURT: Thank you very much.

What is the Government's position.

MR. CARO: The Government's position is that we have no objection to intervention on the grounds of whether or not the application is timely, but we do object to intervention on the grounds of lack of standing. Rule 17 states that unincorporated associations shall have the right to sue as determined under the State law and that where they have no right to sue the rules do give them a right to raise certain constitutional issues.

Under New York State law, the General Associations Law, Section 12, and CPLA Section 1095, unincorporated associates as associates may maintain an action either jointly or in common.

Section 13 of the General Associations Law has similar provisions dealing with when an unincorporated association may be sued.

In this instance the association is seeking to represent the interests of its members not as members but as employees of the New York Public School System---

THE COURT: Excuse me.

The officers are also employees in the main,

aren't they?

MR. GREENWALD: All of the officers except one are full-time employees, the president is on leave of absence.

THE COURT: Why don't you sue using the Council name and by so and so as officers and individuals?

MR. GREENWALD: I assumed I was doing so when I named the applicant as the council; I was proceeding on the basis that the Court would so see it.

THE COURT: Why don't you intervene on that basis?

MR. GREENWALD: On the basis that they are officers?

THE COURT: Make it Council of Supervisors by their officers, so and so as officers and individually.

MR. GREENWALD: Well, with the Court's permission I would so move.

THE COURT: All right. What is next?

MR. CARO: Also, your Honor, I would object to CSA's officers attempting to represent all of their members. Obviously, certain members' interests may require that the information which the Government seeks be provided, specifically those members who may be the victims themselves of any illegal discriminatory practices. As counsel has here said, this is the

equivalent to a class action.

Your Honor, I would require some type of examination into the consensus of the CSA position as to their membership.

I don't at this point recognize that they are acting consistently with the interests and rights of every single member of their organization.

THE COURT: Well, I understand that position; we will treat it primarily as an action by themselves as individuals.

But you can have the Council in the title as descriptive of those indivuduals who are here.

So you will amend your title in that respect.

MR. GREENWALD: By the officers and individuals as officers of CSA.

THE COURT: Yes, which will be descriptive of them as individuals.

What is your next point?

MR. CARO: our next point is that the Order to Show Cause suggests that it is directed towards modifying the injunction order and relieving the members. We are prepared to address ourselves to the merits of that issue and to indicate that we believe the Government does in facthave a right to acquire that information.

Government does in fact have a right to acquire that information.

THE COURT: You will have an opportunity to get to the merits.

The motion to intervene by these individuals named is granted.

The intervenors' papers shall be deemed in answer, and the Government shall be deemed to have denied all the allegations in the answering papers.

This matter is respectfully referred to Magistrate Chrein for a hearing and report at an early date.

Prior to the receipt of the report and action by this Court on that report, the decree of this Court remains in full effect, and the report shall continue to be prepared as directed.

You can arrange with Judge Chrein, both of you, for an immediate hearing and the taking of testimony at your convenience and the Magistrate's.

MR. GREENWALD: Fine, your Honor, I would just like --

THE COURT: If the Government wishes to appeal, it may make a difference whether there is an intervention of right or permissive intervention.-- I don't know whether it makes any difference -- but I will

hold the matter of law to this purpose in order to simplify it procedurally that this is an intervention as of right because the applicants' claim and the interest relating to the action and the disposition of the action may as a practical matter appear to impair their ability to protect their interest.

I further find that their interests are not adequately represented by the existing parties in view of the possibility of a conflict of interest so that if there were no intervention as of right I would permit a permissive intervention since the intervenors claim a defense in the main action that there are questions of law and fact in common.

I have considered whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and I have determined that it will not unduly delay or prejudice the adjudication of the rights of the original parties since during the interim the original order will remain in full force and effect.

Are there any other findings of law or fact that any party wishes to make mention.

MR. GREENWALD: Just one point, your Honor.

I had advised the United States Attorney that I would not seek an alteration of the Court's permanent

injunction, though I indicated that I thought it would be appropriate for the material to be entrusted to the custody of the Court, and the United States Attorney reminded me of the fact, which I think there may be a basis for, that if the material is gathered the matter may be moot.

Now, I certainly don't want to be in a position of going through the hearing and having a Special Referee's report and then to have the contention raised that the matter is moot.

THE COURT: I cannot advise counsel, these are matters on which all I can do is decide the questions that are propounded to me.

MR. GREENWALD: Then may I perhaps as a matter of record ask the Court in view of the possibility of the mootness of the issue after the Court has sent it for a hearing and report, I would then at this time require the Court to gather the material unto itself after its completion.

THE COURT: I can't make any such order, I can't answer any such hypothetical question.

You will have to make a decision yourself as to what yOu want to do after discussing it with counsel, your clients, and the Magistrate.

MR. GREENWALD: Then for purposes of the record

I assume that if I -- well, may I make a motion that the Court suspend its permanent injunction issued on May 27, 1976.

THE COURT: Yes, you may make such a motion.

MR. GREENWALD: May I consider it denied, your Honor.

THE COURT: It is denied at the moment on the basis of the information now before me. However, should any further or new information be made available, I will be happy to reconsider that decision.

MR. GREENWALD: Thank you, your Honor.

THE COURT: Thank you.

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 76-C-861

THE BOARD OF EDUCATION of the CITY OF NEW YORK, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

June 22, 1976
9:30 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: RICHARD P. CARO, ESQ.
Assistant U.S. Attorney

LEONARD GREENWALD, ESQ.
-and-
COSMO J. DITUCCI, ESQ.
-and-
BERYL KUDER, ESQ.
Attorneys for Defendant

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MR. DiTUCCI: If your Honor pleases, may I make a statement and --

THE COURT: Would you kindly give your name to the court reporter.

MR. DiTUCCI: Cosmo J. DiTucci, 32 Court Street, Brooklyn, New York.

If your Honor pleases, I am not admitted to practice before this Court. I am at the present time preparing for submission. I will be submitting today an application for permission to practice, but it will not be acted upon for ten days. I have been called by -- I really don't know how many -- but several of the Community School Boards in Queens, and I have made an appointment to meet with them tomorrow evening and Wednesday to discuss the possibility of my representing them in this proceeding, if they are proper parties. I was present yesterday at a conference before Magistrate Klein. I advised him of my position, and he suggested that I make an application to this Court solely for this proceeding.

However, I am unable at this time to advise the Court of whom I represent; so I would like to be sitting here so I know what's going on, to advise them.

THE COURT: You were admitted to the State

before?

MR. DiTUCCI: Admitted to the State before, and I believe I should be admitted to this Court.

THE COURT: We will be very pleased to have you as an observer, and you are admitted, if you represent -- when you represent a client for the practicing in this case.

MR. DiTUCCI: Thank you, your Honor.

MR. GREENWALD: Your Honor, since --

THE COURT: Would you kindly give your name to the reporter.

MR. GREENWALD: Leonard Greenwald, Frankle & Greenwald, 80 Eighth Avenue, New York, New York.

MS. KUDER: Beryl KUder, Assistant Corporation Counsel.

MR. CARO: Richard P. Caro.

Your Honor, I would like to have -- I have a letter which I wish to make part of the record. It's a cover letter which was served, together with the Orders to Show Cause and other papers, and yesterday, and as well as this morning, beginning at 7:00, various of the respondent principals have called -- it's approximately about a hundred now -- indicating their willingness to comply with the Court Order and fill out the EEO-5, and special compliance reports. There

may have been some difficulty in contacting me yesterday, because of a great number of calls coming in, and perhaps before we proceed further, an opportunity should be given to any of the present respondent principals to indicate whether or not they wish, at this time, to voluntarily comply.

THE COURT: Well, we will have the Clerk call the names of those who are listed as parties. If you are present and wish to be heard or wish to be represented, please come forward and we may be able to proceed more expeditiously.

MR. GREENWALD: Your Honor, I would object to the suggestion of the U.S. Attorney. I am rather --

THE COURT: Excuse me. Who do you represent?

MR. GREENWALD: At this point in time, your Honor, I represent apparently -- though I haven't had an opportunity to speak with them individually -- the principals of various elementary schools.

THE COURT: Can you name the one person you represent?

MR. GREENWALD: I represent Mr. Sol Zeichner, but I think I will represent everyone who's appeared here today.

THE COURT: Well, we don't know that. I will have to find out whether they want you to represent

them or what their status is.

MR. GREENWALD: I would like --

THE COURT: Yes.

MR. GREENWALD: With the Court's indulgence, I just -- on a rough poll of the individuals this morning and some last night, and I really -- at least half of them were not served personally to require. The service ranged from a secretary bringing it in to them, to somebody finding it on his desk. Roughly 30 percent of them, and these are rough figures, I may err either way, weren't contained packages, there were papers incomplete, some of them didn't have an affidavit to show cause. Some of them had two affidavits to show cause.

In addition to that, the June 18th letter, which the U.S. Attorney has just introduced --

THE COURT: Mark it as a Plaintiff's Exhibit.

THE CLERK: Plaintiff's Exhibit 1.

MR. GREENWALD: (Continuing) Sort of an extra-ordinary document. Apparently, I see a situation that somebody's been served with an affidavit without an order to show cause or vice versa calls for civil or criminal intent. The U.S. Attorney speaks to the individual on the phone, the individual not being advised of his right to counsel, not being afforded

the opportunity to seek counsel, not being afforded the opportunity to talk to the counsel, not being afforded the opportunity to look at the papers, discusses with the U.S. Attorney his compliance, if any; extraordinary procedure. It's extraordinary in the sense that we have, and after your Court permitted me to intervene, I very quickly called up the United States Magistrate and we got together and set today at 4:30 for a conference. The Magistrate apparently feeling, as I agree, that time is critical here, set the conference for 9:30 on Monday morning. At that time I showed, Mr. DiTucci was there, Miss Kuder and Mr. Caro.

On Monday morning for the first time I got a copy, as required, of the Board of Education's papers, as of in the original action, your Honor.

As of this time, I have not yet received a copy from the U.S. Attorney, But I understand it will be given to me. At that point in time, after the discussion of legal issues involved, and I think the Magistrate characterizing the Board of Education at this point as a spectator, and after discussing the necessity for Community Boards discussing some of the underlying action, including the unbelievable assertion by the Board of Education that the contractual

basis was a letter entered into in 1965.

THE COURT: Excuse me. I don't want to hear the merits at this point.

MR. GREENWALD: What would you like to do then? The Magistrate has suggested that I submit my legal argument to him in brief form by Monday, this coming Monday. The U.S. Attorney would have 48 hours thereafter.

THE COURT: As I understand the position, based on these papers, as follows:

Despite my order, during further hearings, my prior order compelling filling out of these forms in cooperation, there are a number of people who are not cooperative, and as I understand from the papers, That's the basis for that application.

MR. CARO: That's correct, your Honor.

THE COURT: The Clerk will call the names of the persons listed as defendants. If you are present, please come forward and I will address you.

THE CLERK: Solomon Derewetzky.

MR. CARO: Your Honor, would you like me to indicate which of those have indicated their willingness to comply?

THE COURT: Yes, and if they have been served and so indicated.

MR. CARO: Mr. Derewetzky has indicated his willingness to comply and he's been served.

THE CLERK: Stanley Kaplan.

THE COURT: Mr. Kaplan, would you mind standing near the reporter and giving him your name, address and telephone number.

MR. KAPLAN: Stanley Kaplan, 26 Pleasant Ridge Road, Spring Valley, New York, 914-354-4830.

THE COURT: Give him also your title.

MR. KAPLAN: Principal, P.S. 152, Manhattan.

THE COURT: You may be seated, Mr. Kaplan. Make yourself comfortable. Have you received a copy of these papers asking --

MR. GREENWALD: Your Honor, may I ask --

THE COURT: Excuse me. Have you received a copy of any papers asking you to appear this morning?

MR. KAPLAN: Yes.

THE COURT: Do you wish to be represented by counsel?

MR. KAPLAN: Yes.

THE COURT: Which one?

MR. KAPLAN: Leonard Greenwald.

MR. CARO: Your Honor?

THE COURT: Yes.

MR. CARO: If we might, we believe there's

adherent conflict in representation. Many of the principals, based on advice received from CSA, which Mr. Greenwald is counsel, and refused to comply with Court Order.

THE COURT: You understand you are entitled to your own counsel, since there's a possibility here of jail. If you can't afford counsel, the Government will appoint counsel for you, paid for by the Government.

MR. KAPLAN: Yes.

THE COURT: Despite the fact that there's a conflict possibility, do you still want Mr. Greenwald?

MR. KAPLAN: What kind of conflict?

THE COURT: He may be representing other people which may be to your detriment, since he has to.

MR. KAPLAN: No. I would choose Mr. Greenwald.

THE COURT: Even though it may mean you going to jail?

MR. KAPLAN: Yes.

MR. GREENWALD: Your Honor, I would like to enter my objection to the comment of the U.S. Attorney concerning not only the conflict, but the possible role of the council of supervisors.

THE COURT: All of the people who are present now and who will respond have heard this colloquy,

and all of you understand, I take it, that you are entitled to have your own counsel, since there is a possibility of jail. If you can't afford counsel, since jail may be involved, the Government will arrange for independant counsel paid for by the Government.

Thank you, sir. Next witness.

THE CLERK: Selma M. Lawrence.

THE COURT: Madam, would you mind taking a seat and giving the reporter the information I have asked for.

MRS. LAWRENCE: My name is Selma Lawrence. My home address, I live at 25 Byrne Street, Forest Hills, New York, zip code 11375. My home phone is 793-5859.

THE COURT: Give us your title.

MRS. LAWRENCE: Principal, 143, Junior High School, Manhattan.

THE COURT: Have you received a copy of the papers in this case?

MRS. LAWRENCE: Yes.

THE COURT: Do you wish counsel?

MRS. LAWRENCE: I wish to comply.

THE COURT: Madam, it's not necessary for you to appear. The case is dismissed against Selma M. Lawrence and dismissed against Solomon Derewetzky. Thank you very much. You may return.

Next.

THE CLERK: Morris Finkelstein.

MR. FINKELSTEIN: Morris Finkelstein, 56-20 244th Street, Douglaston, Queens; and Principal of Public School 132 in Manhattan.

THE COURT: And your phone number?

MR. FINKELSTEIN: BA5-5412.

THE COURT: What's your position, sir?

MR. FINKELSTEIN: Principal of 132 in Manhattan.

THE COURT: What's your position in the case? What do you want to do?

MR. FINKELSTEIN: Well, I intend to comply.

THE COURT: All right. The case is dismissed against Morris Finkelstein. You can leave and go back to work. Thank you.

THE CLERK: Norman Miller.

THE COURT: Yes, sir. Good morning.

MR. MILLER: Norman Miller, 1296 Pentington Road, Teaneck, New Jersey, 128 Manhattan, 560 West 169th Street.

THE COURT: And your phone number?

MR. MILLER: 201-837-7769.

THE COURT: What's your position in the school?

MR. MILLER: Principal.

THE COURT: What school?

MR. MILLER: 128, Manhattan.

THE COURT: What's your position in the case now?

MR. MILLER: I wish to comply.

THE COURT: All right. The case is dismissed against Norman Miller. You can return to your work, sir. Thank you.

THE CLERK: Abraham Gross.

THE COURT: Good morning, Mr. Gross.

MR. GROSS: Good morning.

My name?

THE COURT: Name.

MR. GROSS: Abraham Gross. 2720 Avenue J, Brooklyn. Principal of P.S. 115 Manhattan.

I wish to comply.

THE COURT: Case is dismissed against Abraham Gross. You may return. Thank you for coming in.

THE CLERK: Mark Shapiro.

(Pause.)

THE CLERK: Mark Shapiro.

THE COURT: Has he been served?

MR. CARO: To my knowledge he has, your Honor.

THE COURT: All right. Order the Marshal to come forward. Take the name of Mark Shapiro and have

him arrested and brought to court. The Marshal will first make a call to Mr. Shapiro's place of business and home to give him an opportunity to proceed here immediately; otherwise, you pick him up and arrest him.

MR. GREENWALD: Your Honor, I don't believe I know Mr. Shapiro, personally, but --

THE COURT: Do you represent him?

MR. GREENWALD: As far as I know -- at this time, for all purposes, I do, your Honor.

THE COURT: Has he retained you?

MR. GREENWALD: No.

THE COURT: I don't care to hear you until he's retained you. Thank you.

Next.

THE CLERK: Domenick Massaria.

(Pause.)

THE CLERK: Domenick Massaria.

THE COURT: Has he been served?

MR. CARO: Yes, your Honor.

THE COURT: Same order with respect to Domenick Massaria. Give him an opportunity to appear. If not, pick him up immediately and have him brought here under custody.

THE CLERK: Gilbert Musinger.

MR. CARO: He's indicated his willingness to to comply, your Honor, and wishes the charges dismissed.

THE COURT: Dismissed against Musinger.

THE CLERK: Mini Brainin.

(Pause.)

THE CLERK: Mini Brainin?

THE COURT: The Marshal will arrest Mini Brainin and bring her before me. First give her an opportunity to appear voluntarily.

MR. DEREWETZKY: Excuse me, your Honor, may I speak to counsel, please?

MR. GREENWALD: Your Honor, Mr. Kaplan indicated that to me, at this moment, that he would, without prejudice, would be willing to agree to comply.

THE COURT: The charge against Stanley V. Kaplan is dismissed. Solomon Derewetzky is dismissed.

THE CLERK: Jack Levine.

THE COURT: Would you mind sitting down, Mr. Levine. Give your name and home address and telephone number to the reporter.

MR. LEVINE: Jack Levine, 1328 Jonathan Lane, Wantagh, New York.

THE COURT: Your phone number?

MR. LEVINE: 516-221-7852.

THE COURT: And your title in the school system?

MR. LEVINE: Acting Principal of Junior High School 22.

THE COURT: What is your position in this case?

MR. LEVINE: I am one of the respondents named.

THE COURT: Are you willing to comply with the Court Order?

MR. LEVINE: I received a Court Order yesterday from my secretary. I would like to speak to the attorney for one minute, if I may?

THE COURT: You may.

Mr. Greenwald.

(Whereupon, a discussion was had between Mr. Levine and attorney Greenwald.)

MR. LEVINE: Yes.

MR. GREENWALD: Your Honor, in view of all the proceedings that have occurred previously, including the proceedings this morning, I would ask the Court's permission to adjourn this matter until the afternoon. I would like to, with the Court's permission, seek the review of the United States Attorney's actions here before the United States Court of Appeals.

THE COURT: Denied.

MR. GREENWALD: Mr. Levine. I am sorry, Mr. Levine indicated to me that he had received a package from the U.S. Attorney which didn't contain some of the material, but indicated he was willing to comply with the Court's Order.

THE COURT: All right. Dismissed as to Mr. Levine. You may return back to your work. Thank you.

THE CLERK: Paul Flaumenhaft.

MR. GREENWALD: I am sorry. Excuse me, your Honor. May I ask the Court's indulgence?

MR. LEVINE: I just need two or three minutes.

THE COURT: Certainly.

While we are waiting, we will go back to our criminal case.

(Whereupon, a short recess was taken.)

(Continued on next page.)

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(Whereupon Mr. Levine resumed the witness chair.)

MR. GREENWALD: Your Honor, if I may add, during the interval I managed to speak to individuals I have never spoken to before, and they continued to --

THE COURT: Excuse me. I have Mr. Levine before me.

MR. LEVINE: Yes.

THE COURT: Areyou willing to comply or do you want to take another position in this case and be represented by counsel?

MR. LEVINE: I would comply under protest, and I wish to make a statement.

THE COURT: You may do so. I will be happy to hear you.

MR.LEVINE: First of all, I was called about a week and a half ago by a Mr. Jones from the HEW about the survey. I informed him that something had happened to the survey, that I would like to look at. He promised me another copy would be sent to me. I have not seen that at all.

THE COURT: Will you furnish Mr. Levine with a copy.

MR. LEVINE: Secondly, I find the survey morally unjust to me. However, the Court has placed me in a

position regarding the children of the school and the staff of the school going against me and my family, and I am in a very difficult position. Under that circumstance, I comply under protest.

THE COURT: I don't understand.

MR. LEVINE: I said I find the survey is indefensible to have a survey. It has no value. It characterizes people, which I object to. However, for my own personal benefit and certain problems at home, I cannot risk anything like that.

THE COURT: Thank you very much.

MR. CARO: Just a clarification. Mr. Levine, do you need a copy of the EEO-5?

MR. LEVINE: Yes.

MR. CARO: Do you need a copy of the special compliance report?

MR. LEVINE: I need a copy.

MR. CARO: So you need both.

MR. LEVINE: Yes.

MR. GREENWALD: I find it really upsetting for a gentleman to be brought in --

THE COURT: Excuse me --

MR. GREENWALD: I know Mr. --

THE COURT: Excuse me. Are you representing Mr. Levine? He's now dismissed. He is not a part of

this case.

MR. GREENWALD: I understand. It seems to me that Mr. Levine has been asked by this Court to comply with surveys he doesn't have, and which apparently HEW hasn't submitted to him.

In addition to that, there are a number of people out there who were given these surveys on Friday --

THE COURT: Excuse me. You are dismissed. Thank you very much, Mr. Levine. Thank you for your help.

THE CLERK: Paul Flaumenhaft.

THE COURT: Sit down please, Mr. Flaumenhaft. Give your name and address and home number and position to the reporter, please

MR. FLAUMENHAFT: Paul Flaumenhaft, 16 High Pass Circle, Dix Hills, New York 11746. Principal, P.S. 34, Manhattan.

THE COURT: Telephone number?

MR. FLAUMENHAFT: At school, your Honor?

THE COURT: At home.

MR. FLAUMENHAFT: 516-421-4909.

THE COURT: And what position would you like to take in this case?

MR. FLAUMENHAFT: Well, your Honor, I am opposed to the survey, but feel placed in a position, personally, that I can't afford to go to jail. I wish to comply.

THE COURT: Do you wish to be represented by counsel?

MR. FLAUMENHAFT: I have said I will comply.

THE COURT: The case is dismissed against Mr. Flaumenhaft.

THE CLERK: Bernard Mecklowitz.

MR. CARO: Bernard Mecklowitz has indicated his willingness to comply, and the Government asks that the case against him be dismissed.

THE COURT: Yes.

THE CLERK: Stanley Stern.

THE COURT: Excuse me. Is Mr. Mecklowitz here?

MR. CARO: He has indicated his willingness to comply.

THE COURT: All right. Dismissed as to Mecklowitz.

THE CLERK: Stanley Stern.

MR. STERN: Yes.

THE COURT: Sit down, would you please, Mr. Stern.

MR. STERN: Stanley Stern, 37 Circle Lane, Roslyn Heights, New York 11577.

THE COURT: Phone number at home.

MR. STERN: 516-484-4217.

THE COURT: And your title in the school system?

MR. STERN: Interacting principal P.S. 64.

THE COURT: Whatposition do you take in this case?

MR. STERN: I will comply.

THE COURT: Dismissed as to you. Thank you, sir.

THE CLERK: Herbert N. Krasnoff.

THE COURT: Good morning, sir. Give us the information we require.

MR. KRASNOFF: Pardon?

THE COURT: Will you give us your name, phone number, address and title in the school system?

MR. KRASNOFF: Herbert Krasnoff, 510 East 23rd Street, New York 10010. Telephone at home, OR 3-6849. Principal Public School 97, Manhattan.

THE COURT: What position would you like to take in this litigation, sir?

MR. KRASNOFF: I will comply, sir, most reluctantly.

THE COURT: Case is dismissed against you, sir. There is no reason for you to remain. Thank you.

THE CLERK: Carmen Aponte.

THE COURT: Has Carmen Aponte been served?

MR. CARO: Yes, she has.

A VOICE: She will comply.

MR. CARO: Would you identify yourself?

A VOICE: I am the Deputy Superintendent in

District No. 1 and she sent in her papers that she complies.

THE COURT: Would you mind giving us your name, address, telephone number.

MR. LIGGIO: Carl Liggio, home phone number 914-337-5525.

THE COURT: Home address?

MR. LIGGIO: 171 Lawrence Avenue, Eastchester, New York.

THE COURT: Thank you very much, sir, for your help.

THE CLERK: Phillip Thau.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed as to Thau.

THE CLERK: Stanley Metger.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed.

THE CLERK: Sam Margolis.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed as to Margolis.

THE CLERK: Anthony Bilbao.

THE COURT: Good morning, Mr. Bilbao, sit down.

MR. BILBAO: Anthony Bilbao, 236 West 10th Street, 675-7914; principal of -- well, principal of 160, now P.S. 142.

THE COURT: 142?

MR. BILBAO: Yes. It's a new school.

THE COURT: And what is your position in this litigation, sir?

MR. BILBAO: I will comply with your Honor's order. I would like to make a statement.

THE COURT: I will be pleased to hear you.

MR. BILBAO: In this situation, I find that as an individual I am faced with two very compelling problems:

A, the sanctity of law upon which this nation is built, and the sanctity of the rights of individuals, another precept upon which this nation is built. In dealing with these two situations currently, I do not believe that the surveys that we have been asked to complete basically uphold the rights of individuals.

However, in defying a Court order we would be no more upholding the rights of individuals, either. I find in this situation I wind up as an adversary

within the Court of law, which I think is the basis of our country. That should not be, and yet, it has become so in these proceedings this morning. I think the nature of what is possible here, because of the non-compliance with your Honor's order, is the nature of the surveys themselves and their uses. The thing that has disturbed me about the surveys from the very beginning are where are the safeguards and their use? They are not within the legislative development of the surveys themselves, and surely so far they have not been within the precepts of the Court. I think the issue of safeguards is paramount, and it is my hope that in complying at this time, that maybe we can get through the aspects of sanctity of orders and what will be followed and ordered in order, and get to the essence, I think, of what was attempted to be accomplished by individuals originally saying, "No," and that is, that the surveys themselves be looked at, and hopefully some safeguards be placed on them.

THE COURT: You understand, Mr. Bilbao, that there was a litigation in this Court in which the corporation counsel took an adversarial role, that there was a full hearing before one of our magistrates, and that I approved the order only after that hearing. Subsequently, there was intervention, which is now

being conducted by Mr. Greenwald, at which time he will have an opportunity to make these points. The question is always open as to what may be done with the survey and other protections, but as it stands now, the only litigation we have has resulted in an order after hearing that the survey can go forward.

MR. BILBAO: I understand that.

THE COURT: So that there is not the sharp dilemma necessary that you posed between the individuals rights and the need to follow the law.

MR. BILBAO: I understand that, your Honor. But I wish to be understood in the context that I am charged with the responsibility of children and education of future members of our society, and the basics I feel here is that I see in the daily operation of fulfilling my responsibilities. The aspects of misuse of data. At some point we must stand and say, "Can someone please look at this?"

THE COURT: We will give you that opportunity indirectly at least, because we have this suit now, and it was open to you at all times and still is. You have counsel, and you are not being compelled to do something without having the opportunity to be fully heard.

Dismissed as to Bilbao. Next.

MR. GREENWALD: Your Honor, if I may make an expeditious statement to try to expedite.

THE COURT: I prefer to go through it one at a time since we have the individuals here.

THE CLERK: Alan Starsky.

THE COURT: Good morning, sir.

MR. STARSKY: Good morning. Alan Starsky, 23 Oliver Place, Staten Island, New York 10314; 761-6813; interim acting principal at P.S. 188 in Manhattan.

THE COURT: Whatis your position in the suit?

MR. STARSKY: I will comply under protest, and I wish tc make a statement.

THE COURT: Yes. I will be happy to hear you.

MR. STARSKY: The necessity of the requirement that I categorize my colleagues and the children as belonging to a particular racial or ethnic group is repugnant to everything I stand for as a human being, as an educator, because we try to teach the children in the school the oneness of mankind.

THE COURT: Thank you very much. Dismissed. Next.

THE CLERK: Steven Brounstein.

MR. CARO: He has indicated his willingness to comply. The Government asks for the Court to dismiss

the case against him.

THE COURT: Dismissed as to Brounstein.

THE CLERK: Harold Simon.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed as to Simon.

THE CLERK: Angele Rosania.

MR. CARO: The Government asks that the case against her be dismissed.

THE COURT: Dismissed as to Rosania.

THE CLERK: Harry Levine.

MR. CARO: He has indicated his willingess to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed as to Levine.

THE CLERK: Donald Ashman.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed as to Ashman.

THE CLERK: Eugene Levitt.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed as to Levitt.

THE CLERK: Alfred Rappaport.

MR. CARO: The Government asks that the case against him be dismissed.

THE COURT: Dismissed as to Rappaport.

THE CLERK: Melvin Fasner.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Newton Baum.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed.

THE CLERK: Harold Swid.

MR. CARO: He has indicated his willingness to comply. The Government asks the Court to dismiss the case against him.

THE COURT: Dismissed.

THE CLERK: Maria Anderson.

MR. CARO: She has indicated her willingness to comply. The Government asks the Court to dismiss the case against her.

THE COURT: Dismissed.

THE CLERK: John Lunch.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Irving Rosenman.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Benjamin Bromberg.

(Pause.) Benjamin Bromberg.

THE COURT: The marshal will arrest and bring Mr. Bromberg before the Court, first having given him an opportunity to appear voluntarily.

THE CLERK: Brunilda Hernandez.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: William O'Shaughnessy.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Albert Goldstein.

MR. GOLDSTEIN: Here.

THE COURT: Good morning, sir. Sit down, please.

MR. GOLDSTEIN: Thank you. My name is Albert Goldstein. I live at 1741 East 5th Street, Brooklyn, New York 11223. My home phone is 339-0508. I am the principal of Public School 196 in District 14 in Brooklyn.

THE COURT: What is your position in the suit?

MR. GOLDSTEIN: My position is that I will not comply, and if your Honor will give me an opportunity to consult with my counsel, I will be willing to discuss the matter with him.

THE COURT: Yes. Do you want this counsel to represent you?

MR. GOLDSTEIN: Yes.

THE COURT: All right, sir. We will take up your case subsequently. Thank you very much. Remain present.

THE CLERK: Fred Yacovane.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Blanche Salsky.

MR. CARO: She has indicated her willingness to comply. The Government asks that the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Joseph Friscia.

THE COURT: The marshal will arrest Mr. Friscia and bring him before the Court, first giving him an opportunity to appear voluntarily.

THE CLERK: Linon Pretty. (Pause.) Linon Pretty.

THE COURT: The marshal will arrest and bring Linon Pretty before the Court, first giving her or him -- Linon Pretty an opportunity to appear voluntarily.

THE CLERK: Frank Zagari.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Frank Longo.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: DIsmissed.

THE CLERK: Sydney Klevorick. (Pause.) Sydney Klevorick.

THE COURT: The marshal will arrest Mr. Klevorick

and bring him before the Court, first giving him an opportunity to appear voluntarily.

THE CLERK: Sheldon Toback.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Hillel Rosen.

MR. CARO: The Government asks that the case against him be dismissed, because he has indicated his willingness to comply.

THE COURT: Dismissed.

THE CLERK: Felix Berman.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Murray Sussman.

MR. SUSSMAN: Here.

THE COURT: Will you give the reporter the information.

MR. SUSSMAN: Murray Sussman, 229-19 Edgewood Avenue, Laurelton, New York; 527-4688; principal P.S. 26 Queens.

(Continued on next page)

THE COURT: And your position in the case?

MR. SUSSMAN: Your Honor, I am going to comply under protest, and may I make a statement?

THE COURT: Certainly. I will be pleased to hear you.

MR. SUSSMAN: I am very troubled by the fact that the matter is under litigation now before the magistrate, who will rule on the merits of the case, and by complying, I am doing something I consider morally wrong, and later, maybe next week, the magistrate may rule that I am right; that HEW is not entitled to this information, but it will already be done. I will already have submitted it. I submit that I am being asked to state my position prematurely.

THE COURT: Well, we have to go forward. The Court has ruled in the interim, because of our time pressures. If it should appear that the Government is not entitled to the information, the Court has full authority to impound the surveys and take other protective action. But, as a matter of time limits, because of the imminence of the end of the school year, we cannot wait to gather the information. I think you can appreciate that.

MR. SUSSMAN: Yes, your Honor.

THE COURT: Thank you. Dismissed.

THE CLERK: Beverly Hirscholrn.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Matthew Schwartz.

MR. GREENWALD: I have been advised --

THE COURT: Matthew Schwartz.

A VOICE: He is sick.

MR. GREENWALD: Mr. Schwartz underwent surgery a couple of days ago. How he was served, I don't know.

THE COURT: In view of the fact that he is apparently incapacitated, I see no possibility of his complying.

MR. CARO: We are unaware -- there must be an acting principal.

THE COURT: We will have to serve somebody else. Dismissed as to Matthew Schwartz with leave to reinstate where it would appear that that information is not accurate.

THE CLERK: John Piscelli.

MR. PISCELLI: John Piscelli, 25 Vista Hill Road, Great Neck, 11021. 516-482-7916.

THE COURT: And your title?

MR. PISCELLI: Principal of P.S. 46 Queens.

THE COURT: What is your position?

MR. PISCELLI: Judge, I will comply under protest. You have heard all of the argument that has been given to you. I agree with it wholeheartedly.

THE COURT: All right, Mr. Piscelli, it would grieve me to put a neighbor in jail.

THE CLERK: William Nosofsky.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Thomas Caetan.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Irene Fiteni.

MRS. FITENI: I have not indicated my willingness to comply.

THE COURT: Good morning, how are you?

MRS. FITENI: Good morning. Irene Fiteni. 255-05 Iowa Road, Little Neck, New York, 229-2186.

THE COURT: And you are?

MRS. FITENI: Principal P.S. 130 Queens.

THE COURT: Yes. What is your position?

MRS. FITENI: I would like to address the Court.

THE COURT: I will be happy to hear you.

MRS. FITENI: During the last six months my school and staff have participated in an HEW Survey, which took, I would say, approximately three months and consumed a great deal of time, both of the staff and of mine. During that time, the education of the children suffered, because no time was given to the staff to fill that out.

Now, in essence, the Government already has this information through that survey, because it encompassed two to four booklets, ranging from 30 to 60 pages, and the information that was given there was given by the teachers concerning themselves.

Now, I think it is morally wrong for the Government to ask me to ascertain the race and langauge of any child or person on my staff. If I wish to give it willingly or if they wish to give it, it is their civil rights to do so.

THE COURT: I am sorry.

MRS. FITENI: Now, because of personal considerations and my own family, I cannot afford to go to jail, and therefore I will comply under protest, but I agree with the gentleman before me that the posing of these questions, the manner in which they have been posed, to

acquire status, without reasons asked, is immoral and unethical, and will go into computers where it will bring forth things that are not true and are not accurate.

THE COURT: All right. You understand that we have held a hearing on it, and the magistrate did rule after the hearing the evidence, that it was a valid survey. The Government was entitled to this information. There has now been an intervention, and further hearings will be held. If necessary, the Court, based on further hearings can issue protective orders. This was a problem generally that many people have with surveys from Washington; businessmen and educators and others.

MRS. FITENI: And having been an employee of the Federal Government, I know very well how statistics can be misused when they come out, simply as statistics without the facts behind them; and the way that some of those questions were posed in the survey can only lead to misunderstanding when there is no reason attached to them. Therefore, that is why I protest and comply really under duress.

THE COURT: I understand your position. Thank you very much. The case is dismissed as to this defendant.

THE CLERK: E.G. Caponeti.

MR. CARO: The Government asks that the case

against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Frieda Kufeld.

MR. CARO: She has indicated her willingness to comply. The Government asks that the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Patrick Infantino.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Herman Bogdan.

MR. CARO: The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Frank Witson. (Pause.) Frank Witson.

THE COURT: The marshal will arrest and bring Mr. Witson before me, first allowing him to appear voluntarily.

MR. CARO: Excuse me, your Honor. He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Warrant of arrest will be vacated.

THE CLERK: Martin Greenbaum.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Florence Klein.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Seymour Sundick.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Jean Gowney.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: William Stein.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Seymour Weinstein.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Carl Ullman.

THE COURT: Good morning, Mr. Ullman.

MR. ULLMAN: 2596 Woods Avenue, East Meadow. Sunset 5-7324. Principal 213 in Queens. May I say, Judge, I was trained as a sociologist, among other things. I find it very difficult to answer the questions on the ethnic survey. For example, I couldn't define "black." I couldn't see any guidelines in the survey's instructions. Also, where the Government asks for information, there should be a stated purpose and intent. I didn't find a description adequate for our purposes. However, because the foundation of our country is law and order, I must comply under protest.

THE COURT: Well, you do the best you can with the survey indicating your reservations. Thank you very much. Dismissed.

THE CLERK: Berton Lax.

THE COURT: Good morning, sir. Sit down.

MR. LAX: Berton Lax, 10 R.J. Lane, Commack, 11725; phone, 543-1692; principal, P.S. 221 Queens.

THE COURT: What is your position?

MR. LAX: I indicated --

THE COURT: In the lawsuit, I mean.

MR. LAX: I am going to comply under protest. I would appreciate an opportunity to address the Court.

THE COURT: I will be happy to hear you, sir.

MR. LAX: I, too, feel that I am being forced to commit what I consider to be an immoral act, but I am faced with the possibility of going to jail. I consider, personally, the request by Federal Government to complete the survey to be not only immoral, but unconstitutional. I also feel we are being asked to complete a form where when Federal employers seek to hire personnel, they are not permitted to ask the kind of questions that I am supposed to be able to identify with respect to my staff.

Finally, I hoped, because I am very aware of the current litigation regarding this census, I had hoped that the Court would resolve an issue where we could submit the information and yet have it withheld from the Government, pending the outcome of this case.

THE COURT: We may be able to do that depending upon the hearing that will be conducted beginning this afternoon. You understand the posture of the litigation. The hearings that were previously held resulted in an

order that the information be given to the Government without any reservation. Subsequent to that order, there has been an intervention, and because of the objections made I have ordered new hearings to be held. At those hearings I assume counsel will bring that possibility to the attention of the Magistrate, and subsequently to my attention.

MR. LAX: I understand that and appreciate it. I am concerned and quite anxious, as my colleagues, with the misuse and abuse of these statistics prior to that adjudication. I would hope that that would not be the case. However, previous history, previous experience I am afraid makes me quite anxious --

THE COURT: I can't give you any guarantee until I hear from the Magistrate. Thank you. Dismissed.

THE CLERK: Jack Sunshine.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Irving Kamil.

THE COURT: Good morning, sir.

MR. KAMIL: Irving Kamil, 32 Overlook Avenue, Cliffside Park, New Jersey; principal of I.S. 74.

THE COURT: Home phone?

MR. KAMIL: 201-945-1759.

THE COURT: What position will you take in the litigation?

MR. KAMIL: Well, may I ask a question before I answer?

THE COURT: Yes.

MR. KAMIL: I couldn't hear all that was said at the table. I find the entire questionnaire totally abhorrent against my conscience, and I could make a speech which we don't have time for --

THE COURT: I will be glad to hear you.

MR. KAMIL: Very briefly, your Honor, for my Government, the Government of the United States of America to take an action which I only associate with the deepest of the enemies of my people, the Nazis, is so inconsistent toward my feeling with the Government to make real emotion. I never see a child, and I tell you the truth, as a white child, black, Puerto Rican or Oriental. I have been in this business for 27 years. I have worked in Harlem for 12 years, and Bedford Stuyvesant, and I only asked that they ask me for the name of the child. I don't think I can remember if a child is black or white. My children went to college and filled out applications, and it said on some of them "No pictures," so there was no identification as

to race or religion, and I was happy to see that. I would not be a principal in New York City, were it not for the fact that religion and race were not a part of my selection. I knew no one, but for my Government to ask me to give that kind of information, I find so inconsistent with the nature of the Government in a bicentennial year, I am just appalled. I am appalled. I can't go to jail. I don't intend to go to jail. I almost wish I could make the opposite decision. Therefore, I probably will have to comply, because the pressure put on me is very great. But, I can't -- I wanted to know why we couldn't delay this. I think the questionnaire is wrong. I really do. I would be more than delighted to give you the questionnaire for you to seal in an envelope until it is decided, whether such information should be given, because once we give the information to HEW and then subsequently it is decided that we need not have given that information, they have the information. I don't trust them. They are devious. They are mischievous, and the things that are happening around this country, notably in Los Angeles and Chicago as a result of similar questionnaires are harmful to the very nature of democracy. Therefore, I must comply. I thought I heard you say something about impounding?

THE COURT: There is no such order for impounding. The litigation as it now stands has in force an order requiring information to be given to HEW with no limitation on its use. I permitted intervention, and presumably counsel will raise the issue of impoundment or other protective devices in connection with those further hearings.

MR. KAMIL: How will that affect if I comply? I guess they will get the questionnaire to me, but by that time HEW will have the information.

THE COURT: Counsel is going to have a hearing this afternoon.

MR. GREENWALD: No.

THE COURT: No?

MR. GREENWALD: The arrangement with the Magistrate was we would -- the CSA would submit briefs to him by Monday on issues of law. U.S. Attorney has 48 hours to comply thereafter. The Board of Education is going to do nothing.

THE COURT: What is the position of the Government? Are you putting this material on computers?

MR. CARO: Your Honor, let me just -- for a second -- indicate that the Magistrate did give counsel an opportunity to move as expeditiously as he saw fit. There's no delay on the part of the Government.

MR. GREENWALD: The Magistrate asked the U.S. Attorney if he would agree to an adjournment of these contempt hearings until he made a determination following the submission of the brief as he's denied it.

THE COURT: Are you going to put this material on computers?

MR. CARO: Your Honor, the information will be gone forward to be completed and analyzed and collated and stored.

THE COURT: Well, I don't want you to put it in the computer system until after we have had an opportunity for the Magistrate to report. You can go ahead with the collection.

MR. KAMIL: Thank you very much, sir.

THE COURT: But don't put it into the computers.

MR. GOLDSTEIN: I didn't know it would be under those conditions when I said I wouldn't comply. I would be willing to comply under those conditions.

MR. KAMIL: That's Mr. Goldstein, I believe.

THE COURT: Principal of 196. You are now willing to comply?

MR. GOLDSTEIN: Under the conditions you just stated.

THE COURT: I may remove those conditions any time after a hearing. All I am now doing is to provide

everybody an opportunity to be heard. You understand that. Once it's collected, I can't guarantee what's going to happen as of that moment.

MR. GOLDSTEIN: This is reasonable.

THE COURT: You are willing to comply?

MR. GOLDSTEIN: Yes.

THE COURT: Yes. Mr. Albert Goldstein will comply.

MR. KAMIL: And I will, too.

THE COURT: All right. Thank you very much.

THE CLERK: Harold Kobliner. (Pause.) Harold Kobliner.

MR. CARO: He has indicated his willingness to comply. The Government would ask that the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Louis Brasz.

MR. CARO: He has indicated his willingness to comply. The Government asks that the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Seymour Sternberg.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Milton Sobel.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Evelyn Matera.

MR. CARO: She has indicated her willingness to comply. The Government asks the charges against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Andrew Galto.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Irving Schultzman.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Selma Rosen.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Irwin Price.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Seymour Litman.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Mitchell Learner.

THE COURT: Mitchell Learner. The marshal will arrest Mitchell Learner forthwith and bring him to Court, first giving him an opportunity to appear voluntarily.

THE CLERK: Maron Schwartz.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Vincent Romano.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Edward Levitan.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Harold Walters.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Melvin Wortman.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Samuel Peyer.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Lawrence Wolsky.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Herbert Karp.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Samuel Rabinoff.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Herbert Tillem.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Leonard Zuckerman.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Howard Krauss.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Michael Martello.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Alexander Metzger.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Madeline Cahill.

MR. CARO: She has indicated her willingness to comply. The Government asks the charges against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Nathan Falk. (Pause.) Nathan Falk.

THE COURT: The marshal will arrest Nathan Falk forthwith and bring him before the Court, first giving him an opportunity to appear voluntarily.

THE CLERK: Alfred Freed.

MR. CARO: He has indicated his willingness to comply. The Government asks the charges against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Howard Hurwitz.

THE COURT: Good morning.

MR. HURWITZ: Good morning.

THE COURT: Give us your name and address, home phone, title in the school system, and the position that you will take in the case, please.

MR. HURWITZ: My address is 166-15 Grand Central Parkway, Jamaica, New York 11432. I am a principal of Long Island City High School in Long Island City, Queens, New York.

THE COURT: Your home phone?

MR. HURWITZ: My home phone is 380-5029.

THE COURT: And your position in the case?

MR. HURWITZ: My position in this case is that I shall not comply with your order, your Honor.

THE COURT: Do you wish counsel to represent you?

MR. HURWITZ: I wish the attorney, Leonard Greenwald, to represent me.

THE COURT: All right. If you will just stand by, we will consider your case shortly.

MR. HURWITZ: Thank you, sir.

THE COURT: Thank you, Mr. Hurwitz.

THE CLERK: Bess Reynolds.

MR. CARO: She has indicated her willingness to comply. The Government asks the charges against her be

dismissed.

THE COURT: Dismissed.

THE CLERK: Edwin Sturman.

MR. STURMAN: Here.

THE COURT: Good morning.

MR. STURMAN: My name is Edwin Sturman, 67-35 Yellowstone Boulevard, Forest Hills, New York; 261-5546; principal of Public School 48 in Queens.

THE COURT: Home phone.

MR. STURMAN: I gave it already.

THE COURT: What is your position?

MR. STURMAN: I would like to make a statement that I find it most repugnant to complete an ethnic survey. Over the past years we have made great gains in civil rights, where it can no longer put in an advertisement, even male or female, where we do not put in stories whether it's black, white, Indian or Puerto Rican, and yet we are here being asked to identify our teachers. We were asked to do it with our pupils on the very same basis, so I find it at odds with our civil rights growth. I also feel myself in the same position as one of my predecessors in this chair with my feelings about the law. I have a son who just graduated law school this week.

THE COURT: What law school?

MR. STURMAN: You are going to be teaching there. The Brooklyn Law School.

THE COURT: Congratulations.

MR. STURMAN: And I spoke with him last evening. Of course he is not in a position to advise me yet, and I do have the feelings about the law, and I will comply, but under very strong protest.

THE COURT: Thank you very much, sir.

MR. STURMAN: Thank you.

THE COURT: Dismissed.

MR. CARO: Your Honor, before we go any further so that people will not be misled, I have been advised that there has been an immediate need for the Government to utilize the information being collected for one of the areas that is being investigated. If the Court adheres to its decision to stay use of that, I would like to have that as a preliminary injunction so that we can take it up on appeal.

MR. GREENWALD: I would so move.

THE COURT: Submit an order this afternoon embodying the requirement that the information not be placed into computer, and then you can take your appeals.

MR. CARO: Would counsel prepare it?

THE COURT: I think you ought to when the hearing is terminated, so you can take it up to the Court of

Appeals.

MR. GREENWALD: Your Honor, I have been busy through the last couple of days with the Magistrate and with other matters. I am now in preparation of having my office prepare for the appeal to the Court of Appeals, and at the same time, preparing an appeal to the Magistrate. I would like the Court to adjourn and permit me to go to the Court of Appeals this afternoon with the United States Attorney.

THE COURT: No. We are not going to adjourn the hearing. We are going to give them a complete case. No. I see no way of avoiding going through all of these names. I think the Court ought to have a whole issue before it. We will be able to complete this.

MR. GREENWALD: I would like to bring to your attention one matter in which --

THE COURT: Excuse me. We have all these people waiting.

MR. GREENWALD: These aren't all, your Honor. They are ready with another batch of 136.

THE COURT: Let's take care of what we have before us now.

MR. GREENWALD: I assume, because there's been a strange selection in the people before you today --

THE COURT: I will hear you on that later.

Proceed.

THE CLERK: Blanche Schwartz.

THE COURT: Good morning. Nice to see you again. Give your name and home number.

MRS. SCHWARTZ: Blanche Schwartz. My address is 535 West 110th Street; that's New York City 10025. My home phone is Monument 2-9283. I am a junior high school principal.

THE COURT: What is your position in this litigation?

MRS. SCHWARTZ: I am a junior high school --

THE COURT: No. Your position in this litigation.

MRS. SCHWARTZ: My position is I would like to make a statement.

THE COURT: I will be happy to hear you.

MRS. SCHWARTZ: Thank you. I find it extraordinarily painful to have to respond in this case, because I am, your Honor, the product of a rather large mid-European family, who about 35 years ago was forced to respond to another type of ethnic survey, and as a result, about 45 of them did not survive. Therefore, I find this a tremendous moral decision to make, because I did not believe in ethnic surveys, nor do I believe in quota systems. As a matter of fact, when I was a student at Columbia University, I was forced to fill out an

application form which asked me what my religion was, because obviously Columbia had a quota system, and I see the actions of HEW as on the platform of the reformation of a quota system.

If I had faith in the work of the HEW, I would have more faith in ethnic surveys.

As a principal for many years standing, almost 20 years, your Honor, I have not regarded children as white, black or Puerto Rican, but as my children. I have done my best. I have never discriminated, nor has discrimination existed in the school of which I was a principal, and I feel I have done a good job, and I feel that most other principals in this city follow suit in that, your Honor. I feel that also there is moral obligation. However, I do not want to go to jail. I do not want to suffer penalties, and this is a tremendously painful decision, and I wish I could have more time to make this decision, but I will have to be forced to comply under great duress, and this is a really great blow to my moral convictions to do this.

THE COURT: I appreciate your position, but I understand you will comply.

MRS. SCHWARTZ: I will have to, your Honor.

THE COURT: Dismissed. Thank you very much.

THE CLERK: Sigfried Bickoff.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Norman Weisman.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Margaret Greene.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Anna Schmier.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: Edwin Jauffmann.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: William Finegold.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Solomon Zeichner. (Pause.) Solomon Zeichner.

THE COURT: Good morning.

MR. ZEICHNER: Good morning. My name is Solomon Zeichner. My home address is 5918 Post Road, Bronx, New York 10471. I am the principal of Public School 2 in Manhattan.

THE COURT: And your position in this litigation, sir?

MR. ZEICHNER: My position is a very troubled one, and I beg the indulgence and patience of the Court. I know that all of those who preceded me gave some very strong argument about conscience, about the moral repugnance of identifying people by race. I find it very difficult on one basis to even determine who is black and who is white and who is Oriental and who is Puerto Rican. Who do I guard that by? How do I judge? I look at a face. It's partly white, partly brown. Who is to tell me? Seriously, I don't know. I know it's as common practice and fashionable, and speaking of conscience, speak about the holocaust in Germany and

slave labor camps in Russia, and I recall the agreement the Government made with the Indians in this country, and the Japanese. I am very torn. I don't want to defy a Court order. I really don't, and at the same time I don't know how to look at a face and say, oh, "You are white, you are black, you are whatever." Now, I appreciate the order you just gave to the United States Attorney General not to computerize the information. That eases my feelings somewhat, but it doesn't ease my feeling about how to identify who and what, and I find it difficult to decide, and I wonder if I could have our case stayed until such time as our attorney does discuss with the Magistrate to see whether this information is vital and necessary.

THE COURT: Well, I can give you an opportunity to get your own counsel if you would like. Do you wish to retain your own counsel? You realize you face the possibility of contempt?

MR. ZEICHNER: I recognize that.

THE COURT: Do you want an opportunity to get counsel? It's an important matter.

MR. ZEICHNER: Well, Mr. Greenwald is my counsel.

THE COURT: YOu want Mr. Greenwald to represent you?

MR. ZEICHNER: Yes.

THE COURT: All right. Then we will proceed in this case against you.

MR. ZEICHNER: I had asked whether it could be stayed until such time as he appeared before the Magistrate.

THE COURT: I am not in position to grant a stay at this time. I have an outstanding order requiring that all these people call.

MR. ZEICHNER: I recognize that, but --

MR. GREENWALD: Your Honor, --

THE COURT: An application for a stay was denied because of the exigencies of time, the gathering of information, and we ruled on the basis that hearings must go forward.

Now, counsel may take subsequent action with respect to that material, but the delay at this time would mean, as we understand it, a large cost to the Government, and the failure to have usable information which is already given.

MR. ZEICHNER: In the matter of this import, on the matter of such consequences, do we really have to be pushed by that kind of time?

THE COURT: I am afraid you do. We have a situation where the school year is coming to a close, and all the people will scatter. I can't keep all the

teachers and pupils together in the school system while this is litigating.

MR. GREENWALD: Your Honor, as a result of a conference we had before the Magistrate, which leaves me to believe that some of the conclusions of fact and law which the Magistrate relied on are really inaccurate.

THE COURT: Mr. Greenwald, until I set aside my order, that order will be obeyed.

MR. GREENWALD: I understand that.

THE COURT: I am not going to grant a stay at this time.

MR. GREENWALD: Would you grant an adjournment? Now there is an issue we can bring to the Circuit Court.

THE COURT: I will not. The application is denied. What is your position, Mr. Zeichner?

MR. ZEICHNER: I am afraid that I will have to comply.

THE COURT: You will comply?

MR. ZEICHNER: I will comply.

THE COURT: All right. Dismissed as to Solomon Zeichner.

THE CLERK: Benjamin Daraguska.

THE COURT: Yes, sir.

MR. DARAGUSKA: Ben Daraguska, D-O-R-O-G-U-S-K-E-R, 99 Peachtree Lane, Roslyn Heights, New York 11577;

516-484-0950. I am principal of P.S. 117 in Queens.

THE COURT: Good morning. What is your position in this litigation?

MR. DOROGUSKER: I will comply, your Honor, under protest for the reasons given by my colleagues, and also for another reason, I probably never knowingly have broken a law in my life, and Thursday I called my lawyers and said we had a session here, and they said something unusual. They said you were very fair and they trusted you, and I am glad to see that, so I will comply.

THE COURT: Don't comply based upon your trust of me, because I can't control what happens to HEW; you understand that?

MR. DOROGUSKER: Right. One of the reasons I did not want to was basic distrust I have for them, but I will comply.

THE COURT: I don't control the whole Government.

MR. DOROGUSKER: I wish you did.

THE COURT: I am very powerful, but only in this courtroom. Thank you very much, sir. Dismissed.

THE CLERK: Leonard Greenberg.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Arnold Kohn. (Pause.) Arnold Kohn.

THE COURT: The marshal will arrest and bring Mr. Kohn forthwith before the Court, first giving him an opportunity to appear voluntarily.

THE CLERK: Ralph Satterthwaite.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Mortimer Weingart.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Eugene Roberts.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Eli Nieman -- Ralph Weintraub.

THE COURT: Good morning, sir.

MR. WEINTRAUB: Ralph Weintraub, 75-80 182nd Street, Flushing 11366, principal of 174 Queens.

THE COURT: Good morning.

MR. WEINTRAUB: I am willing to comply under protest. May I make a statement?

THE COURT: I will be happy to hear you.

MR. WEINTRAUB: These ethnic surveys by their very nature are very destructive. They point up the differences among people, and I think we only have to look around the world at the present time to see the nature of the difference people accentuate, and the problems that are brought forth. There have been several wars in Ireland, Lebanon, treatment of expulsion from the Asians from Asia and so forth. I only have to look at my own background. I have never seen any of my four grandparents. Being Jewish, they were put to death by the Nazis. These are times of differences, your Honor. For example, these surveys. I don't see anyone here who can testify that in the long run that this material will not be used for some similar type of use. I pray that it isn't. Thank you.

THE COURT: Thank you very much. Dismissed.

THE CLERK: Eli Nieman.

THE COURT: Good morning.

MR. NIEMAN: Good morning. My name is Eli Nieman. My address is 64-18 229th Street, Bayside, Queens 11364.

THE COURT: Phone number?

MR. NIEMAN: 428-0724.

THE COURT: You are the principal of P.S. 175?

MR. NIEMAN: Yes.

THE COURT: What is your position in this litigation, sir?

MR. NIEMAN: I really can't answer that, your Honor, because I received -- I was served with this citation yesterday in the afternoon. I immediately -- I met -- did not meet with anyone. I met with Mr. Greenwald for one minute this morning. Therefore, I have not had any opportunity to consult with counsel in this matter, and I wish an opportunity to select counsel.

THE COURT: Yes. Of course you may do so. You will have to proceed promptly, however, because there are time pressures here, and you have your own counsel here today. Can you have your counsel here today?

MR. NIEMAN: No, sir. I cannot. I have received this at 3:00 o'clock in the afternoon, and I cannot to the extent nor the degree of my own conflicts or supposed conflicts in this matter. Perhaps I took this too lightly. I do not feel that Mr. Greenwald, who represents the CSA, and all of these people, could not really consult with him in any degree, in any kind of department. This is a matter of my own conscience. It is all a matter of what my responsibility is to the

children, to the state and to my family, and I feel that I must consult with counsel before I can reply in this matter, and must select counsel of my choosing. I wish to be given that opportunity.

THE COURT: Do you have counsel in mind?

MR. NIEMAN: Yes, sir, and I did make a call last night. I did not speak to my counsel. He was aware I would be tied up in Court for the next few days, but this is a man that I have in mind.

THE COURT: Who is he?

MR. NIEMAN: Sir?

THE COURT: Who is he?

MR. NIEMAN: Mr. Bailey, Gerald Bailey.

THE COURT: Where is he in Court? Do you know?

MR. NIEMAN: I do not know, sir.

THE COURT: All right. Wait here. I will see you. Why don't you make a phone call to him and see if he can be here at 2:30. Otherwise come back and we will talk to you.

MR. NIEMAN: Yes, sir.

THE CLERK: Morris Nierman.

THE COURT: Good morning.

MR. NIERMAN: My name is Morris Nierman, 71-36 166th Street, Flushing. My phone number is 591-7270. I am principal of P.S. 196 Forest Hills, Queens. I am

bowing to the authority of the Court, your Honor, but very reluctantly. And I wish to make a statement.

THE COURT: I will be happy to hear you.

MR. NIERMAN: I appreciate your patience. First of all, I object tremendously to the way this order was given to us. Yesterday, in the midst of end year procedures, some man came in, threw an envelope on the table we have in the office, and it was given to me by a secretary. Had I not opened it, I'd have an order out for my arrest this morning, that's number one. I think this was a most improper, discourteous, if you will, way to serve an order in so an important a case, but more important than that, I am completing the survey under the most reluctant conditions. It's directly -- this kind of survey is directly contrary to any principles, any idea of moral and democratic values, I have always held. As a member of a minority group, myself, I know full well the implications of what it's like to take surveys of other minority groups; that's number one. Number two, Germany is not that long ago that we have forgotten what surveys and statistics about minorities, and how they were used in other places, in other countries, and there is no reason to believe that the bureaucrats in Washington and the Office of HEW are necessarily any more free of the motives that were

at play in other countries, at other times, and I think that, first of all, I would like to thank you for holding off on putting this information into the computer. I think that's a step in the right direction, but I think that to finish off what I was saying, if the misquote, if we don't learn the maleficence of the past, we are going to relive them all over again, and we are going to relive them as I am pretty darn sure.

THE COURT: I take it you comply?

MR. NIERMAN: You take it correctly.

THE COURT: Thank you.

THE CLERK: Frank Rosen.

MR. HURWITZ: May I --

THE COURT: Excuse me.

MR. HURWITZ: My name is Howard Hurwitz. I am requesting I be permitted to return to my school. We are having graduation on Friday, and I must be there. I will return to this Court at 3:00 p.m.

THE COURT: Will you be able to be here at 3:00 p.m.?

MR. GREENWALD: As I indicated, your Honor, I plan to immediately return to my office and pick up my papers, as I hoped to prepare, and go over to the United States Court of Appeals. I really don't know --

THE COURT: Why don't we do this. Mr. Hurwitz,

you go back to school and remain there or remain at home so you can be reached by telephone at all times, and we will have to get together and see what the situation is in the Court of Appeals, and what the Magistrate's situation is, and our situation.

MR. HURWITZ: I shall be in school until 6:00 p.m., and then at home 7:00 p.m. Thank you, your Honor.

MR. ROSEN: Frank Rosen, 5 Pasadena Drive, Plainview, New York; 516-822-5192; principal of 206, Rego Park, New York.

THE COURT: Yes, sir?

MR. ROSEN: I will comply, your Honor, under duress. I think my colleagues have mentioned the many reasons we feel indignant in terms of this order. It seems strange to me, as educators we are put in a position where we have to deal with legal matters, rather than in terms of items which will affect the education, directly or indirectly, of children. New York City during the last couple of years has gone through a confrontation of its own, in terms of black/white issues, in terms of religious issues, and we thought of possibly very very difficult times, that this could be avoided. This type of situation puts the principals of New York, as well as the teachers, in a position where we must recognize very very clearly

in our minds the differences among the children and among the staff. I would just hope and I certainly appreciate it individually, that this particular point in time the information will not be placed on tapes. We have had experience with tapes in the last two years, and how they can be used and abused, and I thank you. I will comply.

THE COURT: Dismissed.

THE CLERK: Marcia Knoll.

MR. CARO: She has indicated her willingness to comply. The Government asks the case against her be dismissed.

THE COURT: Dismissed.

THE CLERK: George Korot.

MR. KOROT: Yes.

THE COURT: Good morning, sir.

MR. KOROT: Good morning. George Korot, 19 Lawrence Street, New Hyde Park, zip is 11040; 516-354-6959.

THE COURT: Yes, sir?

MR. KOROT: Good morning. I will comply with the order. I have not until now, because of personal reasons. I find that this method, especially in our bicentennial year, of gathering data is one which is not in keeping with our system of Government any more

than the oath of a legion which was successful in the past. I think the things we direct are daily. It's in my thought stream. I run a school where I finally, in my older age, see no difference amongst people, other than the quality of people. It's very difficult to identify people on an ethnic or a racial basis.

THE COURT: Well, I appreciate that, but you will attempt to comply?

MR. KOROT: I will.

THE COURT: Thank you very much. Dismissed.

THE CLERK: Hampton Williams.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Domenic Uzzi.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Frank Jackson.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Harold Baron.

MR. BARON: Here.

THE COURT: Good morning.

MR. BARON: Harold Baron, 86-16 188th Street, Jamaica Estates, New York 11423. Telephone number is 454-3379. I will comply, your Honor, and may I make a statement?

THE COURT: I will be happy to hear you.

MR BARON: I don't want to repeat anything that my colleagues said, but I felt that as a young man and at the receiving end of discrimination because of my religion, and the fact that I believe as a member of a minority group, where six million of us were eradicated, but to the motivation of HEW, I had one of the investigators in my office with a grievance report, and after discussing this with him, I said there are many teachers and colleagues of mine who are being discriminated because they are Jewish. He said it was the concern of HEW that they were not interested in that minority, only in certain other minority groups. So I really am suspect as to their motivation. But I cannot contest this Court order, and I must comply.

THE COURT: Thank you. Dismissed.

THE CLERK: Frank Lanza.

MR. CARO: He has indicated his willingness to

comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Irwin Schwartz.

MR. CARO: He has indicated his willingness to comply. The Government asks the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Henry Kash.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Leon Emmer.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Herbert Kratzer.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Irwin Weinstein.

MR. CARO: He has indicated his willingness to

comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Alvin Yurman.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Anthony Napoli.

MR. CARO: He has indicated his willingness to comply. The Government asks that the case against him be dismissed.

THE COURT: Dismissed.

THE CLERK: Iran Pelcyger. (Pause.) Iran Pelcyger.

THE COURT: The marshal will forthwith arrest Iran Pelcyger and bring him before the Court, first giving him an opportunity to comply with the order to show cause voluntarily.

Let me recapitulate my understandings. First, I want the Government to make certain that those I have ordered arrested have received these personally, and that they are given an opportunity to avoid an embarrassment of being arrested by the United States Marshal and brought before this Court. I expect counsel to do that

personally so there is no question about any misapprehension; is that clear?

MR. CARO: Yes, your Honor.

THE COURT: Now, those that have been ordered arrested are Mark Shapiro, principal of P.S. 98; Domenick Massaria, principal of P.S. 52; Mini Brainin, principal of P.S. 20; Benjamin Bromberg, principal of P.S. 147; Joseph Friscia, principal of P.S. 297; Linon Pretty, principal of Junior High School 33; Sydney Klevorick, principal of Junior High School 71; Mitchell Learner, principal of P.S. 90; and Nathan Falk, principal of Junior High School 202; Arnold Kohn, principal of P.S. 139; and Iran Pelcyger, principal of P.S. 384.

Now, is Eli Nieman back yet?

MR. NIEMAN: Yes.

THE COURT: Would you come forward, Mr. Nieman?

(Whereupon Mr. Nieman returned to the witness chair.)

THE COURT: Have you been able to get your attorney?

MR. NIEMAN: Yes.

THE COURT: What did he suggest?

MR. NIEMAN: Mr. Bailey said he just came from Brooklyn Court. He is tied up at 868-1767, which is his telephone number. I asked him if he would be

available to meet with me at 2:30 this afternoon. I told his secretary, and I told him the urgency of the matter. He told me he is tied up in Court until Thursday.

THE COURT: Then you will have to get another attorney or I will see him after Court hours. I will have to see him early tomorrow, not this evening. I will ask if you will just stand by, and I will see if my law clerk can arrange a meeting. This matter will be adjourned.

MR. GREENWALD: At this point in time, as I recall we have no appointment with the Magistrate. We have a briefing scheduled with the understanding of the Magistrate, which was after receipt of the briefs that he will call us together.

MR. CARO: It's open to expedition, as soon as counsel gets his brief in.

THE COURT: I will see you at 4:30 this afternoon then, subject to your calling my law clerk if you are going to be before the Court of Appeals, at which time I will have the Magistrate here. I will have further word on these people in the order to arrest, and with the possible exception of Mr. Bailey in connection with Mr. Nieman's case, so we will decide how we will proceed.

MR. GREENWALD: If the Court pleases, as I indicated, I have received a copy of the corporation's papers. As of this date I have not received from the U.S. Attorney --

MR. CARO: Your Honor, I told him that he would get them this afternoon after this hearing.

THE COURT: Now --

MR. GREENWALD: As a matter of fact, I was told if was a public file, and I ordered them. I was told if I wanted them I could get them xeroxed.

THE COURT: You will arrange to make copies.

MR. CARO: I told him that repeatedly, your Honor.

THE COURT: I know how busy the corporation counsel is, and I know you don't have that much time, but since you are parties, I think it would be helpful if you did appear before the Court of Appeals today in the matter, because you have the position here and you have been present throughout this matter, and you may be able to throw some light on some of the facts here. I will see you then at 4:30. Thank you.

MR. GREENWALD: Your Honor, will the U.S. Attorney and corporation counsel meet me in the Court of Appeals at 2:00 o'clock?

THE COURT: You can arrange. I have no jurisdiction.

All right, ladies and gentlemen, you can all go. We will continue at 4:00 o'clock for the others. Eli Nieman and Howard Hurwitz.

MR. GREENWALD: Tell Mr. Nieman that I am not representing him. Mr. Hurwitz, you indicated as to where to call from.

THE COURT: Tell him to be here at 4:00 o'clock. Mr. Nieman, I think you better be here at 4:00 o'clock.

MR. NIEMAN: I will be here.

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

----------X

76-C-861

United States Courthouse
Brooklyn, New York

June 23, 1976

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: RICHARD CARO, ESQ.
Assistant U.S. Attorney

LEONARD GREENWALD, ESQ.
Attorney for Defendant Hurwitz

PAUL WINDELL, ESQ.

MR. WINDELL: My name is Paul Windell. I have been asked by Senator Buckley to appear before you and the Court in connection with this matter.

The interest of Senator Buckley as he expressed them to me are these:

The very concern about the quality of these two questionnaires, the extent of the problem and also the issues that are raised of a relationship between a federal authority and the local Government, and his -- the thoughts he wished to express to the Court with due respect are these.

THE COURT: You may be seated, there is no reason to stand.

MR. WINDELL: Thank you, your Honor.

He hasn't participated, and therefore I appreciate we're imposing upon the Court by coming in at this stage. My remarks will undoubtedly indicate a considerable lack of familiarity of what has gone before, what I gather Senator Buckley, who has followed it quite carefully had two thoughts in mind.

He wanted to be sure that before any final action was taken by this Court, that there is a thorough inquiry, factual inquiry to these questionnaires and specific findings, and then his next thought was

that the Court would grant those individuals who felt as a matter of conscience that they could not comply with the Court's order until they had really sorted their remedies, the opportunity to do so, and by that I mean of course that any sanction that the Court might impose on them would be stayed, the effectiveness would be stayed so they could appeal and there could be a final judicial position on something which he considers to be a matter of really, a greater substantive importance. He says this with personal regard for his Honor for whom he is known and I of course have known your Honor many years and also as I say we apologize for coming in at this late time.

(Continued on next page.)

MP/LH
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THE COURT: It's always a pleasure to have such a distinguished counsel before the Court. Of course, I would at all times welcome friendly assistance. You may therefore, if you wish, participate fully in the hearing subject to the normal limitations of amicus curiae.

You are aware, I take it, that the questionnaire was developed by the executives. We have an interesting constitutional and practical issue involving three branches of Government. I take it, you are here representing an individual from the legislative branch. I have, of course, limited jurisdiction as a member of the judicial branch. The United States Attorney represents the executive branch.

The questionnaire was drawn up by one of the executive departments which is under the direction of the President of the United States. And my power to limit the President and the Executive Departments actions is as you know, quite limited. But if you prefer to proceed by participating before the judiciary rather than before the executive or legislative branch, I will, of course, be grateful for your help.

Let's proceed.

MR. GREENWALD: If the Court pleases, I would like to enter some remarks on the record.

Basically, to bring the situation up-to-date. As I indicated to the Court yesterday, I proceeded by order to show cause for an application for a stay to the United States Court of Appeals yesterday afternoon where I was joined by the United States Attorney and the Corporation Counsel.

THE COURT: Have you had a set of papers? Would the United States Attorney please arrange to furnish Mr. Windell a complete set of papers.

MR. WINDELL: Thank you.

THE COURT: Will counsel from this point on ensure that all papers are sent to Mr. Windell as a courtesy and friend of the Court.

MR. CARO: We assume counsel will be participating in the procedure before the Magistrate?

THE COURT: Only to the extent he wishes.

MR. GREENWALD: I submitted to that party a set of papers which contained a stay which read as follows: "All proceedings, motions, decisions and execution of enforcement of the aforementioned final order the United States District Court of the Eastern District of New York, May 27, 1966, Weinstein, J., hereby temporarily stayed and restrained pending the termination of the instant motion of the intervenors and the defendants before this Court.

As I indicated, Judge Mansfield on behalf of the Court of Appeals denied a temporary stay but did set the matter down for argument before the United States Court of Appeals on July 20, 1976.

I just want to remind the Court that we have subsequent -- prior to this, rather, appeared before the Magistrate and have stated our position before the Magistrate. The Magistrate indicated he preferred to proceed by the following method, by the 28th of June, I would file a brief. 48 hours thereafter, which I assume is the 30th of June, the United States Attorney would file a brief, and the Corporation Counsel is free to do whatever they feel they must do. Apparently to remain a spectator.

In any event, the Court of Appeals directed that we file all papers with them by the 29th of June.

Now, in view of that, in view of the fact on the 28th or 29th of June, we will have the matters presented before both the Magistrate, which is for the record, I think I should indicate, issued a report and finding which were consented to the party and on the basis of that consent, the Court ordered the final injunction. The Court having had no independent judgment or review that the matter was

litigated below. As I recall, the Court accepted the findings of fact and law of the Magistrate based on the oral consent of the Corporation Counsel and the United States Attorney that it was correct and consented to.

THE COURT: The Court makes an independent inquiry as it always does based on the documents and other material then before me.

MR. CARO: We would like to --

THE COURT: Excuse me. I prefer each counsel have a full opportunity.

MR. GREENWALD: I had read your note on the special masses report to indicate that the Court was proceeding on the basic masses report and whatever litigation occurred that resulted in that report.

I didn't know, nor was there anything in the report, to reflect independent review by the Court.

THE COURT: I exercised my independent judgment. I didn't hold another hearing on the masses report because there was a consent. The normal practice, if there is any objection to a report, to hold another hearing. There is no need for it. I exercise my individual discretion based on the information that's available having given all the parties full opportunity to present information.

You, of course, were not a party at that time.

MR. GREENWALD: That is correct. During the discussion with the Magistrate, I found out certain facts which seemed to my mind really cast significant doubt on the validity of the action before the Magistrate. If I may mention them briefly, their apparent findings in the Magistrate's report that there was a contractual obligation to furnish the material based on a letter of acceptance, it turned out of course that the letter of acceptance was entered in 1965. It's now 1976.

THE COURT: I prefer not to hear discussion of the notes at this time. I will give you an opportunity of course, to bring me up-to-date.

MR. GREENWALD: On the basis of the information I supply to you, I am going to again ask the Court to adjourn the contempt hearing of Dr. Horowitz until and when a determination is reached either by the Magistrate or by the Court of Appeals.

THE COURT: Thank you.

I would like to know from the United States Attorney what the position of Mark Shapiro is?

MR. CARO: He has indicated his willingness to comply and the Government requests that the action be dismissed as to him.

6 1 THE COURT: Dismissed.

2 Dominick Massaria?

3 MR. CARO: He indicated his willingness to comply

4 and the Government requests dismissal.

5 THE COURT: Dismissed.

6 Minnie Brainin?

7 MR. CARO: She has indicated her willingness to

8 comply and the Government therefore requests that the

9 action against her be dismissed.

10 THE COURT: Dismissed.

11 Benjamin Bromberg?

12 MR. CARO: Indicated his willingness to comply

13 and the Government asks for a dismissal.

14 THE COURT: Dismissed.

15 Joseph Frischia?

16 MR. CARO: He indicated his willingness to

17 comply and the Government therefore asks that the

18 action against him be dismissed.

19 THE COURT: Dismissed.

20 Linon Pretty?

21 MR. CARO: He indicated his willingness to

22 comply and the Government asks the action against him

23 be dismissed.

24 THE COURT: Dismissed.

25 Sidney Klevorick?

MR. CARO: He indicated his willingness to comply and therefore the Government asks that the case against him be dismissed.

THE COURT: Dismissed.

Mitchell Lerner?

MR. CARO: He indicated his willingness to comply and the Government therefore requests that the case against him be dismissed.

THE COURT: Dismissed.

Nathan Falk?

MR. CARO: He indicated his willingness to comply and the Government requests that the action against him be dismissed.

THE COURT: Dismissed.

Howard W. Horowitz?

MR. CARO: As your Honor knows. he has not indicated his willingness to comply. THe Government asks that the case against him go forward.

THE COURT: Is this Dr. Horowitz?

MR. HOROWITZ: Yes, I am Dr. Horowitz.

THE COURT: Would you mind coming forward and sitting with your counsel, please.

MR. HOROWITZ: Where shall I sit?

THE COURT: I think you will be most comfortable next to your counsel.

Who do you want to represent you at the hearing?

MR. HOROWITZ: Mr. Greenwald. And I understand Mr. Windell was kind enough to consent to be a friend of the Court in this action.

THE COURT: You can consult with either of them or anybody else.

Arnold Kohn?

MR. CARO: He indicated his willingness to comply and the Government asks that the case against him be dismissed.

THE COURT: Dismissed.

Ely Mieman?

MR. CARO: He has indicated his willingness to comply and the Government asks that the case be dismissed.

THE COURT: Dismissed.

That leaves us with only Dr. Horowitz.

MR. GREENWALD: Before Dr. Horowitz replies --

THE COURT: I am not asking for a reply, I am going to proceed with the Government's case if you are prepared.

MR. CARO: Yes, I am.

THE COURT: Before we do that, have you served Dr. Horowitz with a copy of my order.

MR. CARO: Yes. It was served by regular mail

and --

MR. GREENWALD: We are not admitting that that is adequate service. Being served as an officer of CSA in my opinion is not sufficient to constitute adequate service. In civil and criminal offenses --

THE COURT: Has he been served?

MR. GREENWALD: Served as a principal by registered mail.

THE COURT: I will hear your proof. Unless you want to contest --

MR. GREENWALD: I want to contest receipt.

THE COURT: All right.

MR. GREENWALD: At the hearing yesterday, I believe the Court at that point, if my notes are correct, questioned Dr. Horowitz whether he was going to comply along the manner in which the other individuals named in the contempt citation were similarly questioned. Since the other individuals indicated they would not contest the Court Order -- as a matter of fact I believe the Court directed the Government to restrain from -- restrained the Government from feeding the things into the machine.

THE COURT: I haven't received a copy of the order.

MR. GREENWALD: Neither have I.

THE COURT: I want that order.

MR. CARO: Yes, your Honor.

THE COURT: Will you prepare it?

MR. CARO: Yes.

THE COURT: You indicated you might take it to the Second Circuit, have you done so?

MR. CARO: We have not. We are presently considering making an application to the Court for reconsideration for reasons which we will present to the Court in the first instance we hope ex parte --

THE COURT: I won't hear anything ex parte.

MR. CARO: At least in camera with counsel present, for reasons we do not wish to disclose. It might prejudice the interest of future actions.

THE COURT: Discuss it with counsel. I am very reluctant to hear any matters in camera which involve the rights of individuals who are present and not present. Until you decide what to do I want to immediately prepare such an order then present it to me this afternoon. Counsel will consult with you so that you can agree on the terms.

MR. CARO: I don't know if I can have it this afternoon. We have limited resources even in the United States Attorney's office.

THE COURT: Do the best you can.

MR. CARO: We would also like to submit briefly, on that point indicated to the Court --

THE COURT: I don't want to hear the merits. I want to proceed with the action which you asked to be prosecuted against Dr. Horowitz.

MR. CARO: Point, your Honor. On of the assistants went down to get the return receipt. I would like to call as Government's first witness Mr. Nicholas Doyle.

N I C H O L A S D O Y L E , a witness, called herein, was sworn by the Clerk of thd Court and testified as follows:

MR. GREENWALD: Before the United States Attorney questions Mr. Doyle, may I finish my statement to the Court?

THE COURT: Yes, of course.

MR. GREENWALD: I indicated previously to the Court -- the Court had Dr. Horowitz appear before it, and responded to a series of questions I believe Dr. Horowitz presented his position.

I would like to renew my objection for the following reasons, one of which is the United States Attorney has proceeded both --

THE COURT: What are you objecting to, my questioning him?

MR. GREENWALD: Yes.

THE COURT: Yes. I think there may be a basis for your objection. He was not warned of his rights. Under the circumstances, the inquiry was necessary, however, in order to determine whether this Court should go forward. You were present and you were available for consultation. Nevertheless, in view of the circumstances, the Court will not consider any of the statements made by Dr. Horowitz yesterday in connection with this hearing.

Is that satisfactory?

MR. GREENWALD: Thank you. I also believe that this is a matter, by the very papers, that might be criminal or civil, I suggest that Horowitz is entitled to a jury trial. I am asking the Court to impanel a jury so that we may proceed.

THE COURT: You mean in the Civil contempts.

MR. GREENWALD: On the criminal contempt.

THE COURT: We will hold an abeyance on that.

MR. GREENWALD: In doing research on it, I notice there is a caution directed towards the Court where contempt procedures are both civil and criminal and spill over --

THE COURT: I agree there is a serious problem and I will accept a brief on it. We will proceed only

civilly at this time.

MR. CARO: The Supreme Court has repeatedly upheld the Court's right to proceed criminally as long as imprisonment does not exceed six months or the fine not exceed $500.

THE COURT: I will be happy to hear you and have a brief on it. I see no point in proceeding criminally. The Court is not interested in punishing anybody, the Court is interested in seeing that its orders are complied with.

Call your first witness.

MR. GREENWALD: May I, with the Court's indulgence, in order to require this Court's jurisdiction in a matter on civil or criminal contempt, I think the law is clear that the affidavit presented to invoke the action must on their faith set forth a basis for the Court to proceed. I don't know if the Court has had an opportunity to read what I believe is the only affidavit in support of its motion for contempt -- with all due respect, I would ask the Court's indulgence and ask the Court to read that. I submit on its face the affidavit does not set forth facts constituting contempt of this Court by Dr. Horowitz?

THE COURT: This is the affidavit,

MR. GREENWALD: Mr. John F. Ford.

THE COURT: Dated June 18th. Is that the one you are referring to?

MR. GREENWALD: Yes, it is signed June 18th.

THE COURT: I think it is sufficient to bring the matter to my attention. Motion to dismiss denied.

MR. GREENWALD: Thank you.

THE COURT: Call your witness and we will have him sworn.

MR. CARO: He has been sworn.

THE COURT: State your name.

THE WITNESS: Nicholas Doyle.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CARO:

Q Would you please state your status with the United States Attorney's office?

A Yes, I am working as a summer intern for the summer with you.

Q Mr. Doyle, were you present in the courtroom when a hearing was held as to the Government's motion to hold CSA and its officers in contempt?

A Yes, I was.

MR. GREENWALD: Objection, your Honor.

MR. CARO: On what ground?

THE COURT: Overruled.

15

Q Mr. Doyle, did you have occasion during that proceeding to hand Dr. Horowitz a copy of the Court's injunction order?

A Yes, I did. I remember serving everybody that was present. All the CSA officers that were present that day.

Q Did you do so at the Court's order and direction?

A Yes, I did.

MR. CARO: No further questions.

CROSS-EXAMINATION

BY MR. GREENWALD:

Q Mr. Doyle, do you specifically remember serving Dr. Horowitz who is here on my left (indicating)?

A No, I remember serving all the officers from CSA.

Q How many were there?

A I think there were eleven.

Q Could it have been twelve?

A I guess so. I believe there was eleven.

Q Could it have been ten?

A I believe there was eleven.

Q Do you recall serving Dr. Horowitz?

A I don't recall the face exactly. There were eleven people. The Judge asked -- you asked me to Xerox

20 copies. I came up with 20 copies and I gave each member who was present a copy of the order.

Q What order did you serve?

A The original. Judge Weinstein's order marked into evidence that day.

Q Anything else?

A I don't know if there was anything attached. I think it was just the order.

Q Mr. Doyle, I don't want to badger you, you are sure it was the order of the Court entered into --

A Yes, it was marked in evidence. In fact, when I Xeroxed the order I Xeroxed the order with the seal on it.

Q Is that all, just that order?

A I am not sure. I think that was it.

MR. CARO: May we have the record reflect that counsel indicated, when he said that order --

THE COURT: Better mark it. This is a Xerox of Plaintiff's Exhibit 1 in evidence at the prior hearing. Better mark it again at this hearing so we know what we are referring to.

THE CLERK: Plaintiff's Exhibit 1 in evidence.

(So marked in evidence.)

THE COURT: Mr. Greenwald, perhaps you can use this.

Q I show you a four-page document marked Plaintiff's Exhibit 1, is that what you distributed, Mr. Doyle?

A Yes, it is.

Q Are you sure you didn't distribute this? Let me mark this for identification.

THE COURT: Mark it.

MR. GREENWALD: Mark it Defendant's A.

MR. CARO: May I see a copy of this?

Mark it.

THE CLERK: Document marked Defendant's Exhibit A into evidence.

(So marked in evidence.)

MR. GREENWALD: Thank you.

Q Mr. Doyle, I show you Defendant's Exhibit A which is also a four-page document and I ask you to tell me which of the exhibits did you serve or --

A I served this (indicating).

Q Plaintiff's Exhibit 1?

A Right.

Q Nothing else?

A No. Now, I do recall -- I think there was also a memorandum of law attached to the Court's order. And I believe that was it.

Q Memorandum of law of whom?

18

Doyle-cross

A Of the United States Attorney.

Q Did you serve any covering letter? Are those the only two documents? Was there anything else besides the documents and memorandum of law?

A I can't recall. I think there were a couple of papers but I was told to Xerox 20 copies and serve each individual member of CSA.

Q You were told -- were your instructions to serve the individuals as officers of the CSA?

A As soon as I walked in I was told to serve those gentlemen in the front of the room and make sure everyone got a copy.

MR. GREENWALD: No further questions.

THE COURT: REdirect?

MR. CARO: No redirect.

THE COURT: Thank you, sir.

MR. CARO: I ask the Court to take judicial notice of the transcript in which the Court did personally have each individual officer of the CSA appear before it, give his name and address --

MR. GREENWALD: I obviously was present at that.

THE COURT: Was Dr. Horowitz present?

MR. GREENWALD: I believe Dr. Horowitz was served as an officer.

19

THE COURT: Your position is he wasn't served as an individual?

MR. GREENWALD: Not for purposes of civil and criminal contempt.

MR. CARO: We believe the distinction is immaterial

MR. GREENWALD: May I also point out at the completion of that proceeding after service of the individuals, the matter was closed.

MR. CARO: We ask the Court to take judicial notice of the transcript of the proceeding.

J A C K F . F O R D , a witness called herein, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. CARO:

Q Will you please state your occupation?

A Equal Opportunity specialist with the Office of Civil Rights, Department of Health, Education, & Welfare.

Q Did you have occasion to go to Washington to oversee and assist in the mailing out of various registered letters to various principals in public schools of New York?

MR. GREENWALD: I object to the form of the question.

THE COURT: Overruled.

A I did, on June 4th.

Q Mr. Ford, do you have in your possession a return receipt with respect to the papers that were mailed to Mr. Horowitz?

A I have a return receipt which was sent to the principal, Long Island City High School, 2801 41st Avenue, Long Island City, New York. And we do have a signature on there.

Q Could you indicate --

A I can't make it out. It looks like KA or Kupin.

MR. CARO: Would you please hand that to defense counsel.

MR. GREENWALD: I assume that is like any occupant junk mail.

THE COURT: Just examine it.

Mark it as Government's Exhibit 2.

MR. CARO: We ask the exhibit be placed in evidence.

THE CLERK: Plaintiff's Exhibit 2 in evidence.

(So marked in evidence.)

BY MR. CARO:

Q Would you please state what the letter contained?

A The item which was mailed out contained a copy of a cover letter by the United States Attorney, David

Trager attached to a copy of Judge Weinstein's order of May 27th, 1976, and a copy, another copy of Judge Weinstein's order which was to be posted on the bulletin board in the school.

Q I would like you to examine Defendant's Exhibit A.

Please disregard all the markings on the pages.

THE COURT: Do you want him to read the whole thing?

MR. CARO: He is examining it.

(Pause.)

Q Do you recognize that document?

A Yes, this is the copy of the order that was included in the mailing.

MR. CARO: No further questions.

CROSS-EXAMINATION

BY MR. GREENWALD:

MR. GREENWALD: May I have the registered receipt?

THE COURT: Yes.

MR. GREENWALD: Thank you.

(Pause.)

Q Now, Mr. Ford, since your last appearance here I assume you've settled in your own mind whether you were in

Washington on June 4th?

A Yes sir, I checked my records and I found I had a receipt of the Eastern Air Lines Shuttle for the June 4th date issued to me on June 3rd.

Q That receipt enabled you to recall you mailed this letter?

A Yes, plus the fact I recall conversations I had with people in Washington on that day where we had indicated that one very important reason to get it out on that particular Friday was that it would give the mail an opportunity to travel over Saturday and Sunday so that it could be delivered on Monday or Tuesday at the latest.

Q I am correct in assuming, am I not, that you have no personal recollection of mailing an envelope addressed to the principal of the Long Island City High School?

A Not a personal recollection. For example, we sent out --

THE COURT: That is enough.

Q You indicated there was a covering letter accompanying that mailing?

A Yes.

MR. GREENWALD: May I have this marked as Defendant's Exhibit B for identification?

THE COURT: Mark it in evidence.

MR. GREENWALD: Thank you, your Honor.

THE CLERK: Three-page document marked Defendant's Exhibit B in evidence.

(So marked in evidence.)

MR. FORD: I show you a letter dated May 28th, 1976, bearing the imprint of the United States Attorney, Mr. Trager, would you look at that and would you tell us from your own independent information and knowledge whether that was the covering letter?

THE WITNESS: Yes, sir.

Q Are you sure?

A Yes.

Q Read it, Mr. Ford, and tell me where in that letter there is a direction to post a copy of an order on a bulletin board?

A (No response.)

Q Let me ask you -- I'm sorry.

A This paragraph reads: "Recently the Government had to initiate court action to assert its right to gather information necessary to this investigation, i.e., the information sought in the special compliance report and the EEO5 forms. The Court has determined that the Government has the right to obtain this information and in order to assure that the information is obtained before the end of this

school year it has entered an injunction order and directed that it be served on education officials in supervisory positions and post it in the schools for all teachers and all other school officials to see and read."

A I understand that. I read that.

Q I just understand your testimony to say you included within that mailing another order where the directions are to be posted --

A We included two copies of the order. One which was for the specific use of the principal, if you will, the order for posting on the bulletin board.

Q Was that you just read to me -- is that a direction in your understanding?

A It certainly is.

Q Okay.

You've produced -- may I ask you whether on May 28th you mailed this letter and the contents to all principals in the public school system in the City of New York?

A No, it was not mailed on the 28th, mailed on June 4th.

Q The letter dated the 28th was mailed on June 4th?

A Yes.

Q Mailed to all supervisory employees?

A Mailed to the principals.

Q All principals?

A We sent out 1,141 envelopes.

Q Whether there was compliance or hadn't been compliance?

A Yes,

Q Did you send it out to members of the Community Board?

A Yes.

Q And District Superintendants?

A Yes.

Q And to teachers?

A To teachers, no.

Q So it's not correct in saying it went to principals and teachers, it just went to principals -- or did you send it to approximately 70,000 teachers?

A We did not send it to 70,000 teachers.

Q Have you examined the EEO5's and special --

MR. CARO: Objection.

THE COURT: Sustained.

Q Mr. Ford, you produced Plaintiff's Exhibit 2 which is some type of return receipt, is that correct?

A Yes.

Q Would you tell us where you got it from?

A When we mailed these parcels out from Washington, each of the envelopes which was mailed out had a copy similar to that on the back of it with the return address labeled. It was placed on there with scotch tape. We put the registry number on the front of each envelope. It was then placed in a special packet by the Chief of the Postal Services in the HEW building who assured us by that packet that we would get expeditious service up to New York. Upon delivery of these parcels to the addressees the postman making the delivery obtained a signature. And then if -- then it's returned to the Department of Health, Education and Welfare.

Q Mr. Ford, in the front of this return receipt I assume it is the front because it's directed return to Martin F. Jerry, Director?

A Yes.

Q There is a stamp which is sort of half legible, June 7th, 1976, United States P.O. and something above it?

A I would take that to be the Long Island City, New York, US Post Office.

Q I see. Does that mean it arrived in Long Island City on June 7th?

A I am not an employee of the post office, I can't answer that.

Q You are assuming it was delivered because it had a signature on it?

A A signature and a date.

Q Whose signature is it?

A I can't identify it.

Q You bother checking?

A No.

Q Do you know in fact there was a delivery?

A That shows there was a delivery.

Q To whom? Could you tell me to whom this was delivered?

A When I first presented this I indicated I couldn't.

THE COURT: The best evidence is the document.

MR. GREENWALD: Okay.

THE COURT: Thank you, sir, that will be all.

Any further questions on point?

MR. CARO: Yes.

THE COURT: On this point?

MR. CARO: Not on this point. We would like to call --

THE COURT: No, that is all we are interested in at the moment, when he received notice of the order.

MR. CARO: If the Court is unsatisfied, we would like to call Dr. Horowitz.

THE COURT: No. In view of the fact there is a possible criminal contempt, he may have a Constitutional right not to testify.

MR. GREENWALD: I am going to move at this time -- I believe the United States Attorney has completed his evidence concerning service -- may I just say that the standard for criminal contempt beyond a reasonable doubt. The standard, as I understand, in civil contempt is clear and convincing. The evidence of the United States Attorney is neither clear nor convincing or beyond a reasonable doubt that there was service perfected on Dr. Horowitz.

THE COURT: The Clerk will as Court Exhibit 1, the original order which is in the file.

THE CLERK: Exhibit 1.

(So marked.)

THE COURT: The Court will hand the original order to Dr. Horowitz.

I direct you to read that order unless you already read it or received a copy of it.

Thereupon, after consulting with your attorney, advise me whether or not you complied.

MR. GREENWALD: May I have a few minutes with

29

Dr. Horowitz?

THE COURT: The US Attorney will provide the Court a complete set of documents that it expects Dr. Horowitz to fill out including all instruction sheets.

You may consult with your client.

We will take a recess.

(A recess was taken at this time.)

MR. GREENWALD: Your Honor, pursuant to your instructions which I think that for the record I indicate I have an objection to, Dr. Horowitz read the order which the Court directed him to read and advice of counsel Dr. Horowitz wishes that the hearing proceed and that the US Attorney has the burden of proving there has been a civil and criminal contempt committed.

THE COURT: Dr. Horowitz -- is it Horowitz or Hurwitz?

MR. HOROWITZ: It's Horowitz. He has been with me for ten years and still cannot pronounce my name.

THE COURT: My wife's name is Hurwitz. I distinguish between the Horowitz's and the Hurwitz's.

MR. HOROWITZ: I hope you won't be prejudiced against me.

29a

THE COURT: It is in your favor.

Dr. Horowitz, I direct you and all of you to comply with my order of May 27th, 1976.

Will you comply?

(Continued on next page)

ST fls.

Thb

MR. WINDELL: Your Honor, I am going to ask that, pose an objection to that question. I don't believe there has been a showing by the United States Attorney that Dr. Horowitz is concerned, nor has the papers in my opinion indicated a basis for our significant facts for either civil or criminal.

THE COURT: Overruled. Please answer my question, sir.

MR. HOROWITZ: Your Honor, I respectfully decline to comply with your order.

THE COURT: I find you in contempt of court, Dr. Horowitz, I make this finding reluctantly, because I admire your professional competence and your dedication to your students, product of a New York City school system I recognize the important contribution which fine people of your background had made the education of the millions of American citizens. I respect the fact that your views are sincerely held, nevertheless the order of this Court must be carried out.

In view of the fact that there may be litigation pending, the Court would in your case, since this will apparently be a test case consider ordering the reports that you furnished sealed pending an appeal. Will you follow my order if those reports are sealed after they

are produced by you pending an appeal?

It's not my purpose to punish you or to hurt you, my purpose is to uphold the law as I understand it, which gives the Executive Department certain powers, requires this Court within the limits of its jurisdiction to enforce the orders, and requests of the Executive of this country.

It's necessary that the reports be completed promptly because the academic year is ending, because as I understand it all of the reports should be completed on or about the same day, using the same population.

In view of your sincerely held belief I can take steps to seal your answers pending an appeal. I can't go any further, what is your position?

MR. HOROWITZ: I do appreciate your concern for me, your Honor, and the difficult decision you must make and I must make. I am stating that I cannot accept that as a condition in view of the state of my mind, and my review of American history, and just what my answer to your question, if it were a positive one that I would like to give you that, I should not.

At one point in this proceeding, and I am not requesting at this time, will I be permitted to say something of a substantive nature; I am not asking for

it, if it is not in the purview of these proceedings.

THE COURT: I'll hear you and your counsel at length and hear anybody you want to hear in your behalf. This is a serious moment in your career.

MR. HOROWITZ: I know that full well. Am I to understand I could if I in the hope of causing you to modify my punishment, or consider that perhaps I am not guilty as charged?

THE COURT: I am not going to punish you, this is a civil contempt hearing.

MR. HOROWITZ: I am not clear, sir?

THE COURT: I am not going to punish you by fining you, or placing you in prison in order to hurt you. What I will do if I find you in contempt is place you in the custody of our Marshals to be held according to my direction until you change your mind and follow the order of the Court. This is civil contempt. You'll hold in effect the key to your own jail in your own hand and you can open that door to the jail any time you want to comply with the order.

It's not a question of punishment at all. I have no intention of punishing you, I have the intention only of seeing that the orders of the Court are complied with. If you want to be heard, I will hear you, I take it you refuse to follow my order even if I

modify it to seal your answer?

MR. HOROWITZ: I feel too deeply about this to accept this opportunity that you are giving me, because I feel it will completely defeat my purpose I am respectfully declining to follow your order.

MR. GREENWALL: Is the Court suggesting that the sealing of these surveys would take place until there is a final adjudication?

THE COURT: Only of Dr. Horowitz.

MR. GREENWALL: That would include what I think this issue deserves, a complete and full hearing before the United States Supreme Court.

THE COURT: It would go as far as needed to go. I wouldn't give you a definite stay, but I will give you a full opportunity in this court, an Appellate Court to try the issues. It's an important issue of conscience.

MR. GREENWALL: May I further ask the Court further questions with this, if Dr. Horowitz completed the material it would immediately be remanded to the Court for sealing?

THE COURT: He can give it to me.

MR. HOROWITZ: I am not going to complete that survey because I feel so deeply about its nature and its implication. I do appreciate however your efforts

and the efforts of the Judge to extend me this privilege of mitigating my contempt. The contempt of course in the legal sense is what we're talking about, not in any majorative layman's language, I just can't do this. I have explained this to you counselor again and again. I do appreciate your efforts to relieve me of this obligation. I know what the implications are full well. I can't do this even though the Judge is giving me opportunity after opportunity.

I just want to stand for something at least in my own mind.

THE COURT: Under the circumstances you leave me no alternative, Dr. Horowitz, but to hold you in contempt.

Call the Marshal. Have the Marshal come to court.

MR. HOROWITZ: May I ask a question of the Court, your Honor?

THE COURT: Of course.

MR. HOROWITZ: There are a few more days.

THE COURT: I am not going to keep you in jail during the school hours, because I want you to be able to help students.

MR. HOROWITZ: Thank you, thank you, sir. There are 3,000 people riding on this thing and I would hate

to hold my own --

THE COURT: Mark this complete set of forms as Court's exhibit, original documents which were sent to Mr. Horowitz and which he returned uncompleted.

MR. MELVILLE: If I may say something awaiting the arrival of the Marshal.

I appreciate the Court has extended itself. I thought that the suggestion that the Court made was a thoughtful one and helpful. I also understand the moral position of Dr. Horowitz and we seem to be faced with almost an insoluble problem. I just wonder if the Court could extend itself one bit further and say that the institution of the custody be deferred until there is an opportunity to make an appeal to the Circuit Court.

THE COURT: I am afraid I am not going to be in a position to do that, because the school year is ending and the whole point of these proceedings is to get these completed by the end of the school year.

MR. GREENWALL: I would like to call one fact to the Court's contention. And the special compliance report, my understanding, substantially all of the material there is to be completed by individuals other than the principal. The material there is a classroom description, the numbers, the ethnic breakdowns basically

to be prepared by teachers and others. The principal performers in many instances, United States Attorney despite its problem about manpower and Dr. Horowitz had never contended he would not let the survey be completed, his contention is he wouldn't participate in the survey.

If the United States Attorney is really interested in this information they can go down this afternoon and get it done in the morning without instructions from Dr. Horowitz, because the actual detail required is not the efforts of the principal.

THE COURT: I understand, for the record I am showing you Court Exhibit 2, Doctor, these as I understand it are the documents in question so there will be no question about it and should there be an appeal there will be a full set of these documents.

MR. HOROWITZ: Your Honor, I am completely familiar with these documents, I have studied every line of it.

THE COURT: If you can work out with the city or the Community School Board, or the Government, some way of replacing Dr. Horowitz, so that somebody else can be acting principal for this purpose, or that somebody else can act, the Court will be happy to hear it. I have no desire at all to punish such

a distinguished and valuable member of the community.

I have no desire to see him hurt at all. I think that, particularly in view of the strains and stresses on our educational system in the City of New York, people of this kind are required at their posts. We were conducting an educational war and we certainly can't lose our generals, especially such distinguished ones.

MR. GREENWALL: In view of your last suggestion I think the Corporation Counsel, if they have a personal knowledge we can find out quickly for a number of years, the EO-5 Forms have met substantial objection from a number of people. And on many occasions during the years including the last year a number of school boards were suspended while teams from the Central Board went around completing the data. I would like the Court to direct Corporation Counsel representing the Board of Ed be directed to, that the Chancellor under whose jurisdiction the high school lies be directed to forthwith have a team of individuals enter the school to complete the canvassing of the class-rooms, none of which Dr. Horowitz was to do initially.

THE COURT: I have no power, if you wish to work that out I will be happy to hear you.

Mr. Marshal, give your name to the reporter.

THE MARSHAL: James R. Boyce, B-o-y-c-e.

THE COURT: Marshal, this is Dr. Horowitz. Will you take him in custody. He is not to be chained manacled or in any way abused. You're to bring him to the Community Treatment Center whereupon he is to be turned over to the custody of the Warden in charge. He is to be immediately released so he can go about his academic duties. He will then voluntarily report each evening at 8:00 p.m. and be released in the morning.

What time do you like to get up and go to work?

MR. HOROWITZ: Five o'clock.

THE COURT: He is to be released each morning at 5:00 a.m., he is to be released Friday night and Saturday night and return again Sunday night at 8:00. He is to be released immediately, as soon as he agrees to comply with the orders of this Court.

MR. HOROWITZ: May I respectfully request just for Friday evening of this week where amusingly enough I am being --

THE COURT: You're off Friday. I want you to be able to be home. I am just interested in keeping you incarcerated during the period where you should be filling out these forms, that is during the work week. You will not serve on Friday or Saturday nights.

Naturally you will be released Friday morning 5:00 a.m. and report back again Sunday night at 8:00 p.m.

You will be able to have all your meals outside. Normally you have to report from 8:00 to 5:00.

MR. HOROWITZ: In other words, I will be incarcerated except for the weekend on Sunday night from 8:00 p.m. to 5:00 p.m.?

THE COURT: And the rest of the time you are released so that you can be in a position to refer your educational obligations including your obligation to complete these reports.

MR. HOROWITZ: If it's relevant to the Court may I say that as of June 17 as able as I would like to think that I am, it would not have been possible to complete these reports, because beginning June 17 no students attended classes in Long Island City High School, nor high schools in the City of New York.

THE COURT: Well, I'll hear counsel on that issue of fact which hasn't been presented. I'll hear him tomorrow as of the moment my order has been disobeyed. I know of no other circumstances you can consult with your counsel on that point and I will hear him any time I'm available any time day or night to hear that you have changed your mind, or there is legal or factual reason why the incarceration should

not be continued. It's not my desire to keep you in custody for a moment more than absolutely necessary.

MR. GREENWALL: Based on the information Dr. Horowitz gave you which frankly he was not aware of, I would like the Court to stay its arrest order until tomorrow morning. I would like the Court at that point, ask the Corporation Counsel to produce the Executive Director for High Schools, Mr. Sam Plotnick, or Abraham Wilner who is the Assistant Superintendent of Queens, to in fact determine whether in fact it has been possible to comply with this information on or after June 17th.

THE COURT: Take Dr. Horowitz in custody now, physically touch him and take him in custody and then let him sit.

You're now in custody. What is the view of the Government on this proposal that the matter be -- that the Doctor be released from custody pending a hearing tomorrow on this issue of whether it's possible to fill out the Court's -- he says it's impossible by himself or anybody else I take it and there is now an application for a stay of the order of custody.

MR. CARO: Most of the information on both forms does not necessarily require Dr. Horowitz to interview, see, go through a number of all his students, some of

the information does require teachers to commute with their class to indicate various things about those students. Therefore I would pose a stay of his custody.

THE COURT: Is it possible for him now?

MR. CARO: There is information right now that he can provide on these forms.

THE COURT: Even though there is no students?

MR. CARO: Yes.

THE COURT: Do you oppose any stay?

MR. CARO: We do for the other reason, that there is still other principals in the school system notwithstanding the action that we brought last week who are still defying a Court Order, the Government as soon as it gets a list of names will initiate the appropriate enforcement action. The Government does this reluctantly, on the other hand the Government's right to obtain this information has been litigated twice. The information is being sought and the mandate of Congress and the law's constitutionality of which has been affirmed by the Supreme Court, we can't see any reason for granting counsel's application.

THE COURT: Mr. Greenwall, would you like to go up to the Court of Appeals to see if you could obtain a stay of this order of incarceration?

MR. GREENWALL: Of an oral request?

THE COURT: I think you can submit a incarceration of this kind involved, you can get immediate attention from one of the judges.

MR. GREENWALL: We would have the leave of your Honor?

THE COURT: It's a final order as to Dr. Horowitz. It's about as final as you can get. This is an order I would think that it's not appealable, certainly to mandamus.

MR. GREENWALL: Would we have the permission to say this appeal is pursued with the -- there is a question to the interrogatory nature. This being a civil contempt.

THE COURT: I'll execute any orders that you want me to and any certificates that you want me to, but I don't think it's necessary they'll probably take an oral submission from the distinguished counsel. Pursuant to a request of counsel that there be a stay while an application is made to the Court of Appeals, or if you like go up to Supreme Court should that be denied, you should do so, the Marshal is ordered to release the defendant from custody pending a final decision by the Court of Appeals, or if an application is made to the Supreme Court of the issue

14

of whether stay should now be granted.

MR. CARO: Is there any time limitation?

THE COURT: I request counsel of both sides to proceed with diligence.

MR. GREENWALL: I assume the Government will order an immediate transcript?

THE COURT: We have problems, Mr. Windell, we don't have enough reporters. I am in the midst of a hearing on an important criminal case and the speedy trial rule, I have had the reporters work through their lunch hour, I don't know if we can give you immediate copy. We simply do not have the personnel. It's a very hard-working court. We can't push our reporters the way we do our judges and lawyers.

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 76-C-861

THE BOARD OF EDUCATION of the CITY OF NEW YORK, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

June 28, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

PERRY AUERBACH
ACTING OFFFICAL COURT REPORTER

Court.

THE COURT: I appreciate the ethnical considerations which prompted this statement. It is a difficult problem, but the Court will do its best. Thank you.

MR. CARO: James Anello.

THE COURT: Good morning. Would you give your name and home address and phone, please, to the reporter.

MR. ANELLO: My name is James Anello. I live at 75-18 Juniper Boulevard, South Middle Village, Queens; 854-5736. I intned to comply with the request of the Court under very serious protest, your Honor, and I would like to make a statement.

THE COURT: I will be happy to hear you.

MR. ANELLO: As an Italian German child during the last World War, my family and I lived in fear for a long time after we heard what happened to the Asian people on the West Coast. Our factor was that we didn't know what our Government would put us in. A few weeks ago HEW sent an investigator to our school. I sat four hours with this gentleman completing a 90 page questionnaire. The first was your name on the questionnaire, and I gave him my name. I happened to know the next question was "Do not ask the respondent to answer these questions, but note," one was the race of the respondent,

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and two was the sex. I asked the gentleman why he didn't ask me these questions, and he said, well, according to the directions which he was following, he was not supposed to ask me. I said, "Wouldn't I be the best source of this information?" He said, well, he didn't know. I said, "Would you like to question my mother regarding it?" And he said, "No."

From thereon in, we completed ninety some odd pages of questions, and in my mind, was always the statement that when this material is fed into some computer, it would be stated, in a sense, of white principals, Caucasian, et cetera. I was annoyed with that, and I wrote to Mr. Trager and I told him I protested the fact that the two questions were not asked, that it was noted. Mr. Trager's answer to me was one that disturbed me even more. The gist of it was "I have nothing to do with the questions. I only enforce the laws." To me this response sounded much like the Nurenberg Trials, and I thought such answer was not an acceptable answer anymore. I knew I would not answer any way if something was brought against my teachers. When it comes from the Attorney General of the United States, I was very much disturbed. As a result of the pressure the Government is putting on me, I feel I have to respond. I feel that HEW had this information.

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7/1/76

CIS:RPC:eh
F. #760665

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action
No. 76 C 861

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

- and -

COUNCIL OF SUPERVISORS and ADMINISTRATORS, et al.,

Intervenors.

- X

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO INTERVENORS' APPLICATION TO VACATE OR MODIFY THE INJUNCTION

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Assistant United States Attorney
(Of Counsel)

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address, familial status, occupation, etc., which have always been recognized as being subject to disclosure, and which the intervenors do not contend should not be disclosed. The only persons who are identified by name, ethnicity and race are those principals who choose to execute the certification on the EEO-5 forms. With respect to this, it should be noted that the principal is not required to execute the certification. Another person whose ethnicity and race is either not disclosed or not separately identified may execute the certification, thereby preserving the anonimity of all those whose ethnicity and race is disclosed. Furthermore in those instances in which a principal executes the certification, the identity of the principal will not be correlated with the principal's ethnic or racial information. Accordingly, there is simply no invasion of privacy that occurs when the ethnicity and race of classes of people (students, teachers, supervisory personnel) is required in an aggregate form which does not compel the disclosure of anyone's identity.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

7/2/76

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

and

COUNCIL OF SUPERVISORS and ADMINISTRATORS, et al.,

Intervenors.

----------x

REPORT OF THE MAGISTRATE

76 C 861

On June 17, 1976, the Court referred to the undersigned a motion brought on behalf of the Council of Supervisors and Administrators Local 1, SASOC, AFL-CIO, by its officers (CSA) to modify an Order of the Court entered on May 27, 1976. This Order in essence, requires the distribution, completion and return of certain E.E.O.-5 forms and Special Compliance Reports addressed to the ethnic composition of the supervisory, teaching and student bodies of the New York City school system.

The Order of May 27, 1976, was entered after the Court had adopted proposed findings of fact and conclusions of law submitted by the undersigned acting as Special Master. In the proceedings held before the Special Master and the Court prior to the entry of the May 27 Order, the parties appearing were the United States and the Board of Education of the City of New York. Subsequently, CSA has been permitted to intervene and Community School Board, District 26 has indicated an intention of intervening in order to seek vacation or modification of the Court's Order.

A conference was held in my office on June 21, 1976, in which the Government, the Central Board, CSA and Community Board 26 were represented. Memoranda in support of their respective positions were filed by the Government, the Intervenors and the applicant for Intervention.

On the basis of the proceedings held before me, I respectfully urge the following ruling by the Court:

1. The Government is entitled to information sought in connection with the E.E.O.-5 forms and Special Compliance Reports.
2. The Local Boards, principals and supervisors and their subordinates are required to provide such information subject to any individual's right to refuse on the grounds of a personal privilege against self-incrimination, to gather and provide information not presently maintained in school or board records.

DISCUSSION

I. The Local Boards and their personnel can be required to gather the sought information.

The information sought in the E.E.O.-5 forms and Special Compliance reports is required by the Government in order to fulfil its statutory duty to investigate violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 d, et seq., Title IX of the Educational Act Amendment of 1972, 20 U.S.C. §§ 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and under the applicable regulations, 45 C.F.R. §80.7.

Since the Government has a right to obtain this information, the burden imposed in gathering this information is not, as urged by Local Board 26, a ground to refuse provision of the data. In support of its position, the Local Board makes reference to 45 C.F.R. 80.6 (c) which provides for access by the responsible department offical or his designee during normal business hours to books, records, accounts and other sources of information, etc. 45 C.F.R. 80.6 (c). Should, however,be read in conjunction with 45 C.F.R. 80.6 (b), which states as follows:

> "Compliance reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part."

and 29 C.F.R. §1602.41 (a) which states:

> "On or before November 30, 1974, and annually thereafter, certain public elementary and secondary school systems and districts, including individually or separately administered districts within such systems, and individual schools within such systems or districts shall file with the Commission or its delegate executed copies of Elementary-Secondary Staff Information Report E.E.O-5 in conformity with the directions set forth in the form and accompanying instructions. The elementary and secondary school systems and district covered are: (1) Every one of those which have 100 or more employees, and (2) every one of those others which have 15 or more employees from which the Commission requests the filing of reports. Every such elementary or secondary school system or district shall retain at all times, for a

period of 3 years, a copy of the most recently filed report E.E.O.-5 at the central office of the school system or district, or the individual school which is the subject of the report, where more convenient, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of Sec. 710 of Title VII, as amended. It is the responsibility of the school systems or districts above described in this section to obtain from the Commission or its delegate necessary supplies of the form."

The Government is therefore clearly by regulation, entitled to place the information gathering burden in conjunction with data gathering on Boards of Education and their employees.

Objection is also made to the cost burden placed on the school districts by the information gathering required by the reports. That issue has been decided in:

United States v. Morton Salt Co.
338 U.S. 632 (1950)

Oklahoma Press Publishing Co. v. Walling
327 U.S. 186 (1946)

Endicott Johnson Corp. v. Perkins
317 U.S. 501 (1943)

upholding the power of Federal Agencies to obtain extensive information in connection with the investigation of matters within their competence.

II. The Local Boards and supervisors are bound by the court's Order.

Even if the "Assurance of Compliance" signed by James B. Donovan on behalf of the Central School Board in 1965 was signed before the various Local Boards came into existence, it was made "binding upon the applicant, its successors, transferees and assignees.". Should the Local Boards be entities distinct from the Central Board, they are nonetheless in regard to the functions and powers they individually possess, successors, transferees and

assignees of the Central Board. The Local Boards accept the benefits of Federal Financial Assistance and are therefore encumbered with the obligations such acceptance of benefits imposes. Rule 65 (d) of the Federal Rules of Civil Procedure provides that an injunction or restraining order is binding on

> "Parties to the action, their officers, agents, servants, employees, and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise"

Inasmuch as principal's and supervisor's salaries are the responsibility of the Central Board in its capacity of "Public Employer" under the Education Law of New York State and in view of the fact that the Central Board by that law, formally appoints all supervisors, teachers; is responsible for paying the salary of all salaried employees and is empowered to require local Community Boards to render such reports as necessary. Education Law of New York State Act 52 Section 2573 1(b), Act 52-A Section 2590 g Subdivisions 5, 6 and 7. The Local Boards, principals, teachers and other employees are subject to the authority of the Central Board and thereby bound by the Court's injunction order as contemplated in Rule 65 (d) of the Federal Rules of Civil Procedure.

III. <u>No Illegal Act Would Be Performed In Complying With The Court's Order.</u>

Local Board 26, in its memorandum, cites the Civil Rights Act of New York State, Book 8, Section 40 (a), with its proscription of the gathering of information on or reporting the religion or religious affiliation of persons seeking employment or official positions in the Public Schools of the State of New York. The undersigned has, in connection with his duties as Special Master,

in the earlier proceedings, seen the Special Compliance and E.E.O.-5 questionnaires and nowhere is there any questions pertaining to the religion or religious affiliation of any person student, teacher or supervisor. This objection to the Court's Order must therefore, fall.

IV. The Court's Order does not do violence to the First Amendment Right of Free Speech.

The intervenor in its memorandum, raises the issue that the Court's injunction order violates the First Amendment rights of principals and others. The claim is that the requirement of ethnic identification has the potential of interfering with the right of free speech through its compelled identification of membership in minority groups. In advancing this argument, reliance is placed on NAACP v. Alabama, 357 U.S. 449 (1958) and Bates v. Little Rock 361 U.S. 516 (1960). The Supreme Court in those cases, held that the freedom of association of members of the N.A.A.C.P. would be chilled if that organization were to be compelled to identify its members. An individual through identification, may be inhibited from joining a political organization. He may, by publication of identity, abandon friends, social groups and even his religious faith. The information sought in the E.E.O.-5 reports and Special Compliance reports that intervenor objects to, seeks to identify students and staff by ethnic group. The identification, apart from principals, is to be made not by questioning but by observation. The identification of principals, while requiring self-labelling, deals with qualities such as ethnic background and skin color, which is usually apparent and always immutable. While a person may abandon friends, associations and beliefs, through identification, he cannot change the qualities

associated with his ethnicity and therefore, no right protected by the First Amendment, is abused by the Court's Order.

V. No Cognizable Right To Privacy Is Invaded By The Court's Order.

Intervenor's position is that the information sought has the potential of invading constitutionally protected rights of privacy. There is no question but that privacy is an interest that enjoys constitutional protection, however, necessity has often overridden claims to privacy more compelling than that defended by intervenors. In appropriate circumstances, a man's personal papers can be permissably used to convict him. Anderson v. Maryland Case No. 74-1646 _____U.S._____(1976) his body can be invaded to extract blood specimens. Schmerber v. California 384 U.S. 757 (1966) his private telephone conversations can even be overheard and recorded 18 U.S.C. Section 2516 et seq., Identification by race in some circumstances, has been condemned in situations where the thrust of the identification has been to deny the identified parties the right to exercise constitutional rights. In Anderson v. Martin, 375 U.S. 399 (1964), the Supreme Court struck down a Louisiana statute, designating candidates by race on the ballot on the rationale that such identification may affect a candidate's electibility to public office. In Hamm v. Virginia State Board of Elections 230 F. Supp. 156 (E.D. Va. 1964) aff'd per curiam Sub Nom., Tancil v. Wood 379 U.S. 19 (1964), the Court held that provisions requiring racially classified voter registration, property ownership and taxation records were constitutionally impermissable. The Court in Hamm, however, found no constitutional objection to the recitation of the race of the husband and wife in state maintained divorce records on the

grounds that the collection of such date served a legitimate statistical purpose. Very often, racial data is required to vindicate the rights of minority groups seeking equal protection of laws. In Whitus v. Georgia 385 U.S. 545 (1967), the Court vacated a conviction because 27.1% of the taxpayers in the community were negro, 42% of the males over 21 were negro, 3 of 33 prospective Grand Jurors were negro and only 1 served and 7 of 90 prospective petit jurors were negro, with none serving. The rights of the defendant in Whitus could not have been protected by the Court if the racial data had been unavailable just as the rights sought to be vindicated herein cannot be protected without necessary racial identification.

VI. The Court's injunction order may in limited circumstances require the production of material protected by the Fifth Amendment.

Local Board 26 in its memorandum, raises the issue of possible violation of the Fifth Amendment rights of the Boards and individuals resulting from the compelled production of the information sought. In this case, HEW and OCR are involved in an extended investigation of possible discrimination in the Public School system of New York City and now seek specific facts which will aid them in determining if any School Board, its members and/or employees have engaged in acts of discrimination or violations of the civil rights of various complainants. The Civil Rights Law of New York State, provides in Section 40-c:

" . . . Section 40-c. "All persons within the jurisdiction of this State, shall be entitled to the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, creed, color or national origin, be subjected to any discrimination in his civil rights by any other person or

by any firm, corporation or institution, or by the state or any agency or subdivision of the state. Added L. 1965 c. 1031 Sec. 19, eff. Sept. 1, 1967" . . . and Section 40-d. Any persons who shall violate any of the provisions of the foregoing section.. "shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars"... and "shall, also for every such offense be deemed guilty of a misdemeanor..." "or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment."

Section 105.00 of the New York Penal Code defines conspiracy in the Fourth Degree as follows:

> "A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct." Conspiracy in the fourth degree is a Class B misdemeanor.

Section 10.00 (7) of the New York State Penal Law, defines a "Person" as:

> "....a human being and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or governmental instrumentality."

Section 70.15 of the New York Penal Law specifies a maximum sentence of three months imprisonment for a Class B misdemeanor.

From the above, it is clear that a cognizable claim exists that the production of the information sought may lead to the conviction of school boards and individuals.

The Fifth Amendment to the United States Constitution, pro-

vides no defense to the Boards themselves as the right against self-incrimination, is personal only to natural individuals. United States v. White 322 U.S. 694 (1944); Wilson v. United States 221 U.S. 361 (1910), Hudson Tire Mart Inc. v. Aetna Casualty and Surety Company 518 F. 2d 671 (2d Cir. 1975), Wilson v. United States (supra) and Davis v. United States, 328 U.S. 582 (1946) also held that the custodian of corporate records cannot claim the protection of the Fifth Amendment against a demand that he produce materials from the records in his custody.

It would therefore follow, that principals, supervisors and others can be compelled to report on materials in their files already gathered.

Compliance with the Court's injunction order does however, require principals, supervisors, teachers and others to make observations and report these observations. Since these observations may form the substance of a more than hypothetically possible prosecution for the crimes of conspiracy to violate civil rights or violation of civil rights, Principals, supervisors and others should be permitted individually to assert a claim of privilege against the requirement to observe and report.

In Malloy v. Hogan 378 U.S. 1, 11 (1963) quoting from Hoffman v. United States 341 U.S. 479, 486-7 (1951), the Court said that:

> "The privilege afforded not only extends to answers that would in themselves support a conviction . . . but likewise embrace those which would furnish a link in the chain of evidence needed to prosecute.. If the witness, upon interposing his claim, were required to prove the hazard...he would be compelled

to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result."

At 378 U.S. 12 quoting from 371 U.S. at 488, the Standard for the assertion of the privilege is set forth as requiring it to be:

"...perfectly clear from a careful consideration of all the circumstances in the case, that the witness is mistaken and that the answers cannot possibly have such tendency to incriminate" (emphasis in original)

In reaching this conclusion, I am aware of the holding in California v. Byers 402 U.S. 424 (1970) that informational gathering statutes, seeking information from the general public and not directed against a class of the public inherently suspected of criminality,do not run afoul of the Fifth Amendment. The situation herein does not involve as a generalized search for information as exists in income tax statutes or accident reporting requirements. Complaints have been made of deprivations of the civil rights of students and others. The study being undertaken is addressed to these complaints, the persons burdened with reporting are potential targets of these complaints and they should therefore, be permitted, if they wish, to object to being required to report on their own observations.

Respectfully submitted,

A. SIMON CHREIN
United States Magistrate
Eastern District of New York

Dated: Brooklyn, New York
July 2, 1976

7/13/76

CIS:RPC:sd
F. #760665

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

Plaintiff,

76 C 861

- against -

THE BOARD OF EDUCATION OF
THE CITY OF NEW YORK, et al.,

Defendants,

- and -

COUNSEL OF SUPERVISORS AND
ADMINISTRATORS, et al.,

Intervenors.

- X

MEMORANDUM OF LAW IN
SUPPORT OF GOVERNMENT'S
EXCEPTION TO THE SECOND
"REPORT OF THE MAGISTRATE"

DAVID G. TRAGER
United States Attorney
Eastern District of New York
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Brooklyn, New York 11201

Richard P. Caro
Assistant U.S. Attorney
(Of Counsel)

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to federal authorities respecting crucial elements of federal crimes. In each case the information being compelled constituted itself a virtual admission of illegal activities and subjected the discloser of the information to almost certain and imminent prosecution. This is clearly not the case here.

In the circumstances of the present case, the requisite degree of immediacy and probability of criminal prosecution is plainly not present. Cf. Zicarelli v. New Jersey St. Com'n of Investigation, 406 U.S. 472, 478-479 (1972). If anything it is remote and the remoteness of the likelihood of prosecution is further increased by the fact that the identity of the person providing the information is not disclosed except in the instance of the person who executes the certification on the EEO-5 form. But even in this case, the certification may be executed by someone who was not a party to any allegedly discriminatory acts or activities.

Thus the Government contends that there does not exist a sufficient threat of criminal prosecution that would warrant an individual who is required to observe and report his observations from refusing to do so under the privilege against self-incrimination.

CIS:RPC:ija
F. #760,665

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants,

- and -

COUNCIL OF SUPERVISORS AND ADMINISTRATORS, LOCAL 1, SASOC AFL-CIO, by its officers, et al.,

Intervenors.

- X

ORDER

Civil Action
No. 76 C 861

This cause and the parties hereto having come to be heard for a full hearing on the merits, and David G. Trager, United States Attorney for the Eastern District of New York, by Richard P. Caro, Assistant United States Attorney, of counsel, appearing for plaintiff, and W. Bernard Richland, Corporation Counsel of the City of New York, by Beryl Kuder, Assistant Corporation Counsel, of counsel, appearing for defendants, Leonard Greenwald, appearing for the intervenor, the Council of Supervisors and Administrators, Local SASOC, AFL-CIO, by its officers, and Cosmo J. DiTucci, by David Mallis, appearing for the intervenor, Community School Board, District 26, it is hereby ordered and decreed:

1. That the Community School Board, District 26, is permitted to intervene for the same reasons and on the same grounds as the Council of Supervisors and Administrators Local SASOC, AFL-CIO, by its officers.

2. That the Report of the Magistrate filed July 7, 1976 is accepted and adopted by this Court with the following modifications:

PART VI of the Magistrate's report is stricken as being unnecessary at this time. Any individual seeking to rely on his personal right not to incriminate himself may apply at any time to this Court by order to show cause pleading the privilege and providing a basis for the plea. Since no individual has made such a claim, the issue is not ripe for decision. ~~Neither of the intervenors may plead the privilege on behalf of individuals.~~

3. That the Office for Civil Rights of the Department of Health, Education and Welfare is ~~enjoined~~ STAYED from placing into its computer, i.e., inputing into the existing data base, any data or information being obtained from the EEO-5 forms and the Special Compliance Reports for ~~[redacted]~~ fourteen (14) days from the date of this order pending the filing of a notice of appeal and the filing with the Court of Appeals of a motion to extend the above stay by any party.

4. This order constitutes the final judgment in this case. The clerk shall close the file subject to reopening it should there be an application for ~~[redacted]~~ FOOT-of-the-decree relief by a party or proposed individual intervenor.

SO ORDERED:

Dated: Brooklyn, New York
July 15, 1976

/S/ JACK B WEINSTEIN
HON. JACK B. WEINSTEIN
United STates District Judge

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